SUPREME COURT, U. S.
No. 946
DEC 22 1967

In the Supreme Court of the United States

OCTOBER TERM, 1967

CIVIL AERONAUTICS BOARD, PETITIONER

v.

PAN AMERICAN WORLD AIRWAYS, INC., TRANS WORLD AIRLINES, INC., AND AMERICAN AIRLINES, INC.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

The Solicitor General, on behalf of the Civil Aeronautics Board, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit, entered in this case on July 20, 1967.

OPINIONS BELOW

The opinion of the court of appeals (App. A, *infra*, pp. 11-36) is reported at 380 F. 2d 770. The Board's orders under review in this case (App. B, *infra*, pp. 37-96) adopted by reference its discussion of the jurisdictional question presented in Order E-23350, is-

sued on March 11, 1966, treating the identical issue in the domestic phase of the same consolidated proceeding (App. C, *infra*, pp. 97-108).

JURISDICTION

The judgment of the court of appeals was entered on July 20, 1967 (App. D, *infra*, pp. 109-110). Timely petitions for rehearing and rehearing *en banc* were denied on September 29, 1967. The jurisdiction of this Court is invoked under 49 U.S.C. 1486(f) and 28 U.S.C. 1254 (1).

QUESTION PRESENTED

Whether the Civil Aeronautics Board has the power to authorize supplemental air carriers to carry inclusive tour charters.

STATUTE INVOLVED

Relevant provisions of the Federal Aviation Act of 1958, 72 Stat. 731, as amended, 49 U.S.C. 1301 *et seq.*, are set forth in Appendix E, *infra*, pp. 111-114.

STATEMENT

This case involves several orders adopted by the Civil Aeronautics Board, with the approval of the President, pursuant to Sections 401(d)(3) and 801 of the Federal Aviation Act (49 U.S.C. 1371(d)(3), 1461, App. E, *infra*, pp. 112-113), which awarded certificates of public convenience and necessity to various supplemental air carriers authorizing them to engage in "supplemental air transportation (includ-

ing inclusive tour authority) with respect to persons and property" between points in the United States and various foreign points (R. 566-593, 1083-1086, 1107-1118).[1]

In 1962 Congress amended the Federal Aviation Act to empower the CAB to grant certificates of public convenience and necessity for "supplemental air transportation"[2] (49 U.S.C. 1371(d)(3), App. E, *infra*, p. 112). "Supplemental air transportation" was defined as "charter trips in air transportation * * * to supplement the scheduled service" which regular route carriers are authorized to provide (49 U.S.C. 1301 (33), App. E, *infra*, p. 111).

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[1] The supplemental air carriers are a group of carriers, known at earlier stages of their historical development as "non-scheduled" or "large irregular" air carriers, which instituted operations after the close of World War II under a then-existing blanket exemption for non-scheduled operations. Generally speaking "inclusive tours" are synonymous with the familiar "all-expense" or "package" tour which includes not only the basic air transportation but various land arrangements, such as hotel accommodations, meals, sightseeing, etc., and "inclusive tour charters" are arrangements by which the air carrier charters the aircraft to a "tour operator", a travel specialist who sells the entire package to the public for a single price. All such charters must be conducted in conformity with the detailed requirements of Part 378 of the Board's Special Regulations (R. 414, 604). ("R." citations refer to the pages of the Joint Appendix filed in the court below).

[2] P.L. 87-528, 76 Stat. 143. As a result of the decisions in *American Airlines* v. *Civil Aeronautics Board*, 235 F. 2d 845 (C.A.D.C.), certiorari denied, 353 U.S. 905, and *United Air Lines* v. *Civil Aeronautics Board*, 278 F. 2d 446 (C.A. D.C.), *vacated*, 364 U.S. 297, the statutory basis under then-existing law for continued operations by this class of carriers was placed in doubt and this led to enactment of P.L. 87-528.

On March 11, 1966, the Board adopted three sets of orders, involving the domestic and international phases of supplemental carrier operations, each of which concluded that inclusive tour charters were charter trips and that such services should be authorized (R. 332, 543, 1060).[3] The Board determined that it had statutory power to authorize inclusive tour charters because: (a) such charters fall within the generally accepted concept of charter operations, *National Bus Traffic Association* v. *United States*, 143 F. Supp. 689 (D.N.J.), affirmed *per curiam*, 352 U.S. 1020; (b) Congress intended that the interpretation and application of the term "charter trips" used in the statute be left largely to the Board, *American Airlines* v. *Civil Aeronautics Board*, 348 F. 2d 349 (C.A. D.C.); and (c) such authorization would further the overall purpose of the 1962 amendments to the Federal Aviation Act, which was to strengthen "the economic outlook for the industry." [4] Since under Section 801, 49 U.S.C. 1461 (App. E, *infra*, p. 113), supplemental air transportation awards involving international routes must be approved by the President before publication, only that order of the Board dealing with domestic service was immediately subject to judicial review.

Respondents sought review of that order in the Court of Appeals for the District of Columbia, con-

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[3] Two sets of orders were entered in the *Supplemental Air Service Proceeding* (Docket No. 13795) and the third was entered in the *Transatlantic Charter Investigation* (Docket No. 11908).

[4] H. Rep. No. 1177, 87th Cong., 1st Sess. 17.

tending that the inclusive tour charters were not "charter trips" and that the Board awards were therefore in excess of statutory power. The court rejected respondents' contention and affirmed the Board order, holding that the Board's interpretation of its statutory power "comports with the overall statutory intention of Congress." *American Airlines* v. *Civil Aeronautics Board*, 365 F. 2d 939, 944, 948 (C.A.D.C.).

A few months after the decision of the Court of Appeals for the District of Columbia, the awards for international inclusive-tour charters were approved by the President and released to the public. Abandoning the affirmative steps they had taken to seek review by this Court of the decision of the Court of Appeals for the District of Columbia sustaining the domestic order, respondents sought review of the international inclusive-tour authority in the court below. The court set aside the Board's orders, holding that "the term 'charter trips' was not intended to embrace the inclusive tour charters authorized by the Board's orders" [5] (App. A, *infra*, p. 24).

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[5] Respondents also contended below that the orders were invalid by reason of certain procedural defects. The court did not reach these issues because of its determination that the award of inclusive tour authority was in any event beyond the Board's statutory power. The Board argued below and, if certiorari is granted, will argue here that consideration of these contentions is barred under the *Waterman Steamship* doctrine (*C. & S. Air Lines* v. *Waterman S.S. Corp.*, 333 U.S. 103). Thus, we will urge that the proper disposition of this case, if this Court upholds the authority of the Board to award inclusive tour charters, would be to reverse and remand to the court of appeals with instructions to enter judgment affirming the orders under review.

REASONS FOR GRANTING THE WRIT

This case presents a direct conflict between the District of Columbia Circuit and the Second Circuit concerning the meaning and scope of a fundamental provision of the Federal Aviation Act. The issue which divides the courts is of continuing and major significance, for it involves determinations by the Board and the President as to the future place of supplemental air carriers in the nation's air-transportation system.

1. Unless the judgment below is reviewed by this Court, there will be left standing separate decisions of two circuits which cannot be reconciled. As formulated by the court below (App. A, *infra*, p. 24), "The question before us is whether the Board's statutory authority to issue certificates of public convenience and necessity for 'supplemental air transportation,' defined as 'charter trips in air transportation,' * * * includes the power to authorize inclusive tour charters." Upon the basis of the pertinent legislative history and judicial precedent, the District of Columbia Circuit answered the question in the affirmative. Invoking precisely the same legislative history and judicial precedent, the court below answered the same question in the negative. As matters presently stand, supplemental carriers may operate domestic inclusive tours, while the identical charters in overseas and foreign air transportation are unlawful.[6] In these circumstances, this Court

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[6] It is of no moment that the awards sustained by the D.C. Circuit were for domestic operations, while those held unlawful below were for international operations. The statu-

should resolve the existing conflict so that the Act may be uniformly administered.

2. Moreover, the issue involved in this case is of such consequence that review by this Court would be warranted, even if there were not a conflict in the circuits. Congress has recognized that the supplemental air carrier industry is a "significant and valuable part of the Nation's air transportation system." [7] The "basic purpose" of the consolidated cases which culminated in the awards challenged below was to make a "comprehensive and cohesive" determination as to the appropriate place of supplemental carriers in that system (R. 54). Many factors of national importance entered into the Board's decision, including the potentially favorable effect which the operations authorized would have on the balance of payments deficit problem (R. 549-553), and the importance of strengthening the economic position of the supplemental carriers in order to enable them to maintain and increase their already recognized value as a national defense asset (R. 72-84). Moreover, since the Board's decision required Presidential approval, the challenged awards reflect the President's determination as to the appropriate role of the supplemental

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tory definition of "supplemental air transportation," *i.e.*, "charter trips in air transportation," is the same for interstate, overseas, and foreign operations since "air transportation" by definition embraces all three without distinction (Section 101(10), 49 U.S.C. 1301(10), App. E, *infra*, p. 111).

[7] S. Rep. No. 1567, 86th Cong., 2d Sess., p. 5. See also, H. Rep. No. 1177, 87th Cong., 1st Sess., p. 16.

industry in international air transportation. We submit that a decision of a court of appeals which strikes down a program of such significance merits review by this Court.[8]

3. A careful analysis of the legislative history of the statute supports the conclusion that the Board is empowered to authorize the supplemental carriers to engage in inclusive tour operations. The Senate Committee specifically stated that inclusive tour charters of the sort authorized by the Board "conform to the traditional concept of charter" [9] because "this is a very different sort of service from individually ticketed transportation" (S. Rep. No. 688, 87th Cong., 1st Sess., pp. 13-14), and the Senate version of the legislation expressly embodied the inclusive tour charter concept into a statutory definition of "charter service." The House Committee, on the other hand, took the view that "authority to define charter services

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[8] Contrary to various statements in the opinion below (App. A, *infra*, pp. 20-22), the Board did not and does not claim that *C. & S. Airlines* v. *Waterman S.S. Corp.*, 333 U.S. 103, precludes review of Presidentially approved orders authorizing U. S. carriers to engage in international air transportation so long as review is confined to the issue of statutory power to make the award. As noted above, see note 5, *supra*, the Board contended only that allegations concerning procedural defects in the proceeding were not subject to judicial review.

[9] It should be noted that the term "charter" in the Motor Carriers Act has been held to include such tours. *Tauck Tours, Inc., Extension—New York*, 50 MCC 373, affirmed, *National Bus Traffic Association* v. *United States*, 143 F. Supp. 689 (D.N.J.), affirmed *per curiam*, 352 U.S. 1020.

should be left, as at present, with the Board" because "this is a very difficult subject and any effort to freeze a definition of charter service into law could well lead into complications" (H. Rep. No. 1177, 87th Cong., 1st Sess., p. 11). For this reason the House version contained no definition of "charter trip" and it was this version which was ultimately enacted. These reports indicate, as the District of Columbia Circuit said, that Congress intended "that the Board should be free to evolve a definition" of charter service in accordance with the needs of the air transportation system, so long as it preserved "the distinction between group and individually ticketed travel" (365 F. 2d at p. 949).

In reaching the opposite conclusion, the court below relied on various statements made by members of the conference committee during the debates which followed the Senate-House conference. In light of the fact that neither of the original Senate or House bills would have precluded the Board from authorizing inclusive tours as a part of charter service, we believe the court below was in error in giving controlling weight to the remarks of a few Senators and Congressmen.[10]

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[10] Of the statements relied on by the Court below only those of Senators Scott and Cotton conclusively support the proposition that the Board was not to have authority to authorize inclusive tours. The other statements are consistent with the view that there should be no fixed definition of "charter trips" so that the Board would "be in a position to deal effectively with any efforts to abuse the meaning of charter" (App. B, *infra*, p. 31) and could insure that the charter concept would not be employed as a subterfuge for performance of individually ticketed point-to-point transportation. (App. B, *infra*, p. 32).

Certainly, the legislative history does not so clearly compel a contrary result as to justify the court below in abandoning the normal rule that the construction of a statutory term by those charged with the administration of a statute, if reasonable, is entitled to judicial respect even though another construction might also be reasonable. See *Udall* v. *Tallman*, 380 U.S. 1, 16; *National Labor Relations Board* v. *Coca-Cola Bot. Co.*, 350 U.S. 264.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted.

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Nos. 510-11—September Term, 1966.

(Argued June 15, 1967 Decided July 20, 1967.)

Docket Nos. 30947-30948

PAN AMERICAN WORLD AIRWAYS, INC., TRANS WORLD AIRLINES, INC., AMERICAN AIRLINES, INC., PETITIONERS

v.

CIVIL AERONAUTICS BOARD, RESPONDENT
WORLD AIRWAYS, INC., ET AL., INTERVENORS

Before:

HAYS and FEINBERG, *Circuit Judges*,
and MCLEAN, *District Judge.**

Petition to review orders of the Civil Aeronautics Board awarding certain supplemental air carriers certificates which authorize them, *inter alia*, to operate so-called "inclusive tours" between points in the United States and various foreign points.

Orders set aside to the extent that they authorize "inclusive tours." Case remanded for further proceedings not inconsistent with this opinion.

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* Of the Southern District of New York, sitting by designation.

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CHARLES A. HOBBS, Washington, D.C. (Glen A. Wilkinson, Paul S. Quinn and Wilkinson, Cragun & Barker, on the brief), *for Intervenor American Society of Travel Agents, Inc.*

CLAYTON L. BURWELL, Washington, D. C., Counsel for Trans International Airlines, Inc., and RAYMOND J. RASENBERGER, Washington, D. C., Counsel for Purdue Aeronautics Corp., and World Airways Inc. (Stephen D. Potts, Washington, D. C., Counsel for American Flyers Airlines, Inc., George Berkowitz, New York, New York, Counsel for Capitol Airways, Inc., and Leonard N. Bebchick, Washington, D. C., Counsel for Saturn Airways, Inc., on the brief), *for the Intervenor Supplemental Air Carriers.*

HAYS, *Circuit Judge*:

This is a petition to review five orders of the Civil Aeronautics Board awarding certain supplemental air carriers, intervenors in this action, certificates which

authorize them to operate so-called "inclusive tours" [1] between points in the United States and various foreign points. Petitioners' principal contention is that the Board lacked the power to authorize inclusive tours. The jurisdiction of this court is invoked under Section 1006 of the Federal Aviation Act of 1958, 49 U. S. C. § 1486. We hold that the Board lacked the power to authorize "inclusive tours" and that the challenged provisions should be stricken from the certificates awarded to the intervening carriers.

I.

Petitioners are three air carriers holding certificates of public convenience and necessity issued by the Civil Aeronautics Board under Section 401(d)(1) of the Federal Aviation Act, 49 U. S. C. § 1371(d)(1), authorizing them to engage in air transportation between the United States and various points abroad. Each of the intervenors, with the exception of the American Society of Travel Agents, Inc., is a supplemental air carrier [2] defined under Section 101(32)

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[1] The term "inclusive tour" is, generally speaking, synonymous with the more familiar "all expense" or "package" tour. Such a tour includes various land arrangements, for example, hotel accomodations, meals and sightseeing, as well as air transportation. "Inclusive tour charters" are arrangements by which the air carrier charters a plane to a "tour operator" or travel agent who sells the entire package to the public for a single price per person. In this opinion we adopt this terminology which was used by the Board although not by the hearing examiner.

[2] At earlier stages of their development these carriers were known variously as "non-scheduled" or "large irregular" air carriers. Their history has been marked by frequent controversy and litigation. See, e.g., *Great Lakes Airlines, Inc.* v. *Civil Aeronautics Board*, 294 F. 2d 217, 221, n. 6 and cases there cited (D. C. Cir.), cert. denied, 366 U. S. 965 (1961).

of the Act, 49 U. S. C. § 1301(32), as "an air carrier holding a certificate of public convenience and necessity authorizing it to engage in supplemental air transportation." As the name implies, the services of supplemental air carriers are intended to supplement those of the scheduled carriers. See Section 101(33) of the Act, 49 U. S. C. § 1301(33).

In July 1962, Congress enacted Public Law 87-528, 76 Stat. 143, amending the Federal Aviation Act of 1958. The amendment established a comprehensive system for the certification and regulation of supplemental air carriers. In particular, it empowered the Civil Aeronautics Board to grant certificates of public convenience and necessity authorizing these carriers to engage in "supplemental air transportation." Section 401(d)(3), 49 U. S. C. § 1371(d)(3).[3] "Supplemental air transportation" was defined as "charter trips in air transportation . . . to supplement the scheduled service" which regular route carriers such as

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[3] § 1371. *Certificate of public convenience and necessity*

(d) *Issuance*

* * * *

(3) In the case of an application for a certificate to engage in supplemental air transportation, the Board may issue a certificate, to any applicant not holding a certificate under paragraph (1) or (2) of this subsection, authorizing the whole or any part thereof, and for such periods, as may be required by the public convenience and necessity, if it finds that the applicant is fit, willing, and able properly to perform the transportation covered by the application and to conform to the provisions of this chapter and the rules, regulations, and requirements of the Board hereunder. Any certificate issued pursuant to this paragraph shall contain such limitations as the Board shall find necessary to assure that the service rendered pursuant thereto will be limited to supplemental air transportation as defined in this chapter.

petitioners are authorized to provide. Section 101 (33), 49 U. S. C. § 1301(33).

On March 11, 1966 the Board handed down opinions and orders in proceedings known as the *Supplemental Air Service Proceeding* and the *Reopened Transatlantic Charter Investigation*.

One of the orders, issued in the *Supplemental Air Service Proceeding*, Docket No. 13795, approved the certification of certain supplemental air carriers in the domestic area and authorized them to operate inclusive tour charters. CAB Order No. E-23350 (March 11, 1966). Other orders issued under the same name and docket number, (1) approved the certification of certain supplemental carriers to operate in various overseas and foreign areas[4] and au-

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[4] Section 101(21) of the Act, 49 U.S.C. § 1301(21) provides:

"Interstate air transportation," "overseas air transportation," and "foreign air transportation," respectively, mean the carriage by aircraft of persons or property as a common carrier for compensation or hire or the carriage of mail by aircraft, in commerce between, respectively—

(a) a place in any State of the United States, or the District of Columbia, and a place in any other State of the United States, or the District of Columbia; or between places in the same State of the United States through the airspace over any place outside thereof; or between places in the same Territory or possession of the United States, or the District of Columbia;

(b) a place in any State of the United States, or the District of Columbia, and any place in a Territory or possession of the United States; or between a place in a Territory or possesion of the United States, and a place in any other Territory or possesion of the United States; and

(c) a place in the United States and any place outside thereof;

whether such commerce moves wholly by aircraft or partly by aircraft and partly by other forms of transportation.

thorized them to operate inclusive tours (CAB Order No. E-24237 (March 11, 1966)), and (2) adopted proposed regulations defining various terms and setting out the scope of the carriers' inclusive tour authorization (CAB Order No. E-24238 (March 11, 1966)).

Two other orders were issued the same day under the title *Reopened Transatlantic Charter Investigation* (All-Expense Tour Phase), Docket No. 11908. Under the first of these orders, the right to operate inclusive tours was added to the certificates previously granted to Capitol Airways and Saturn Airways authorizing them to engage in supplemental air transportation in the tranatlantic area. CAB Order No. E-24240 (March 11, 1966). The second order adopted for the authorized transatlantic supplemental carriers the regulations referred to above. CAB Order No. E-24241 (March 11, 1966).

Under the statute the orders concerned with foreign air transportation entered in the *Reopened Transatlantic* and *Supplemental Air Service* cases were subject to the President's approval. See Section 801 of the Act, 49 U. S. C. § 1461.[5] Those are the

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[5] § 1461. *The President of the United States*

The issuance, denial, transfer, amendment, cancellation, suspension, or revocation of, and the terms, conditions, and limitations contained in, any certificate authorizing an air carrier to engage in overseas or foreign air transportation, or air transportation between places in the same Territory or possession, or any permit issuable to any foreign air carrier under section 1372 of this title, shall be subject to the approval of the President. Copies of all applications in respect of such certificates and permits shall be transmitted to the President by the Board before hearing thereon, and all decisions thereon by the Board shall be submitted to the President before publication thereof.

orders now before us for review. No presidential approval was required for the domestic orders entered in the *Supplemental Air Service Proceeding*. They immediately became final and subject to judicial review. The petitioners in the instant case were among the parties who sought judicial review of the Board's domestic orders in the Court of Appeals for the District of Columbia Circuit, contending primarily that the Board exceeded its statutory powers in granting supplemental carriers inclusive tour authority. That court had previously decided the "split charter" [6] case, *American Airlines, Inc.* v. *Civil Aeronautics Board*, 348 F. 2d 349 (D. C. Cir. 1965), in which it had said:

> "Congress intended, although not without limits, that the Board should be free to evolve a definition [of 'charter trips,' 49 U. S. C. §§ 1301 (33)] in relation to such variable factors as changing needs and changing aircraft. . . ." 348 F. 2d at 354.

Relying in part on the quoted statement and in part on its own analysis of the relevant legislative history, the court rejected the contention that Congress had not empowered the Board to authorize inclusive tours. *American Airlines* v. *Civil Aeronautics Board*, 365 F. 2d 939 (D. C. Cir. 1966).

Thereafter, on September 27, 1966, the orders concerning foreign air transportation were approved by the President. Petitioners now seek review of the orders in this court contending that the Board exceeded

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[6] A split charter "is simply the process of chartering one half of an aircraft to each of two unrelated charter groups." *American Airlines* v. *Civil Aeronautics Board*, 348 F. 2d 349, 354 (D.C. Cir. 1965).

its statutory powers in granting inclusive tour authority to supplemental air carriers. They also urge that the Board erred in denying them a hearing before it granted inclusive tour authority to the supplemental carriers involved in the *Reopened Transatlantic Charter Investigation* and that the orders are unlawful under the statute since they were approved by only two members of the five man Board, one member dissenting and two not participating.

In view of our decision that the grant of authority for inclusive tours was beyond the Board's power, we find it unnecessary to reach the other points raised by petitioners.

The Board contests petitioners' claims on the merits. It also argues that its power with respect to the orders in question was conclusively determined in the prior action involving these petitioners, *American Airlines* v. *Civil Aeronautics Board*, *supra*, 365 F. 2d 939, and that the doctrine of *res judicata* precludes relitigation of this issue.

II.

The Board has moved that the appeal be dismissed or transferred to the Court of Appeals for the District of Columbia Circuit. It is conceded that our court has jurisdiction of the petition and that venue is proper under Section 1006 of the Act, 49 U. S. C. § 1486. However, the Board argues that petitioners are guilty of forum-shopping, seeking a determination from this court contrary to that reached by the District of Columbia Circuit, thus enhancing their opportunity for review in the Supreme Court of the legal issues here tendered. We are urged to transfer the appeal, either under the provisions of 28 U. S. C.

§ 2112,[7] or in the exercise of our inherent discretionary power.

Section 2112 authorizes transfer only where "proceedings have been instituted in two or more courts of appeals with respect to the same order." It is clear that the orders before us are not the same as those reviewed by the Court of Appeals for the District of Columbia Circuit. See *Far East Conference* v. *Federal Maritime Comm'n*, 337 F. 2d 146, 148 n. 1 (D. C. Cir. 1964), cert. denied, 379 U. S. 991 (1965).

Even assuming that this court has inherent discretionary power to transfer a case to another court of appeals in the interests of orderly judicial administration (but see *Gulf Oil Corp.* v. *Federal Power Comm'n*, 330 F. 2d 824 (5th Cir. 1964)), we find nothing in the decided cases that would justify us in trans-

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[7] § 2112. Record on review and enforcement of agency orders.

(a) The several courts of appeals shall have power to adopt, with the approval of the Judicial Conference of the United States, rules, which so far as practicable shall be uniform in all such courts prescribing the time and manner of filing and the contents of the record in all proceedings instituted in the courts of appeals to enjoin, set aside, suspend, modify, or otherwise review or enforce orders of administrative agencies, boards, commissions, and officers, to the extent that the applicable statute does not specifically prescribe such time or manner of filing or contents of the record . . . . If proceedings have been instituted in two or more courts of appeals with respect to the same order the agency, board, commission, or officer concerned shall file the record in that one of such courts in which a proceeding with respect to such order was first instituted. The other courts in which such proceedings are pending shall thereupon transfer them to the court of appeals in which the record has been filed. For the convenience of the parties in the interest of justice such court may thereafter transfer all the proceedings with respect to such order to any other court of appeals.

ferring this case to the District of Columbia Circuit. We have jurisdiction of the action and, since petitioners' principal place of business is in the Second Circuit, venue is properly laid. Cf. *Panhandle Eastern Pipe Line Co.* v. *Federal Power Comm'n*, 343 F. 2d 905 (8th Cir. 1965); *Panhandle Eastern Pipe Line Co.* v. *Federal Power Comm'n*, 337 F. 2d 249 (10th Cir. 1964). Reaching the merits in this case will not require us to construe a prior order of another circuit (cf. *Pacific Gas & Electric Co.* v. *Federal Power Comm'n*, 272 F. 2d 510 (D. C. Cir. 1958) (accepting transfer from 9th Circuit)) and we are not presented with the very unusual circumstances thought by the court to justify transfer in *Eastern Air Lines* v. *Civil Aeronautics Board*, 354 F. 2d 507 (D. C. Cir. 1965). In the absence of any showing of inconvenience to respondent, we are not convinced that there are any interests of sound judicial administation which suggest that this case should be transferred. We can perceive no reason for treating this case as an exception to the principle affording a litigant wide latitude in his selection of a forum where Congress has given him a choice.

III.

The Board's motion to dismiss is based on its contention that the doctrine of *Chicago & S. Air Lines* v. *Waterman S. S. Co.*, 333 U. S. 103 (1948), precludes review of the Board's challenged orders and that, in any event, principles of *res judicata* prevent petitioners from relitigating the issues. We hold that neither the *Waterman* doctrine nor principles of *res judicata* bar us from deciding the merits of petitioners' claim.

In the *Waterman* case petitioner sought to invalidate a Board order awarding route authority for overseas and foreign air transportation. In accord-

ance with Section 801 of the statute, 49 U. S. C. § 1461 (reprinted in footnote 5 *supra*), the order had been submitted to the President and had been approved by him. Petitioner did not challenge the regularity of the Board's proceedings and apparently raised no issue as to the Board's statutory authority; instead it attacked the correctness of the Board's findings and the adequacy of the evidence supporting them. The Supreme Court held that:

> "[O]rders of the Board as to certificates for overseas or foreign air transportation are not mature and are therefore not susceptible of judicial review at any time before they are finalized by Presidential approval. After such approval has been given, the final orders embody Presidential discretion as to political matters beyond the competence of the courts to adjudicate." 333 U. S. at 114.

We need not decide whether, as has been argued, the *Waterman* decision rests on a misinterpretation of Section 1006 of the Act, 49 U. S. C. § 1486 providing for judicial review of the Board's orders. See Miller, the *Waterman* Doctrine Revisited, 54 Geo. L. J. 5, 6-9 (1965). We agree with the Court of Appeals for the District of Columbia Circuit that the *Waterman* case does not "govern a situation where the action of the Board, before the matter reaches the President, is beyond the Board's power to act." *American Airlines* v. *Civil Aeronautics Board*, *supra*, 348 F. 2d at 352. As the court there stated:

> "Clearly, *Waterman* presupposes lawfully exercised congressional authority in the Board's action, in the first instance, as an indispensable predicate, without which there is nothing Presi-

dential action can approve." *Ibid.; cf. id.* at 354-55 (concurring opinion); see generally, Miller, *op. cit. supra.*

Waterman, therefore, presents no obstacle to the attack on the Board's orders in this case.

We also reject the Board's contention that the doctrine of *res judicata* bars further litigation of the issues now before us.

The principles to be applied were summarized by the Supreme Court in *Commissioner* v. *Sunnen*, 333 U. S. 591 (1948):

> "[I]f the very same facts and no others are involved in the second case . . . the prior judgment will be conclusive as to the same legal issues which appear, assuming no intervening doctrinal change. But if the relevant facts in the two cases are separable, even though they be similar or identical, collateral estoppel does not govern the legal issues which recur in the second case." 333 U. S. at 601 (footnote omitted); see *Consolidated Edison Co.* v. *United States*, 279 F. 2d 152, 154 (2d Cir. 1960), aff'd 366 U. S. 380 (1961); cf. *Federal Power Comm'n* v. *Amerada Petroleum Corp.*, 379 U. S. 687, 690 (1965); *United States* v. *Stone & Downer Co.*, 274 U. S. 225 (1927); *Grandview Dairy* v. *Jones*, 157 F. 2d 5, 9, 10 (2d Cir.), cert. denied, 329 U. S. 787 (1946); see generally Developments in the Law —*Res Judicata*, 65 Harv. L. Rev. 818, 843-44 (1952).

More recently, in *Yates* v. *United States*, 354 U. S. 298 (1957), the Court said that the

> "doctrine makes conclusive in subsequent proceedings only determinations of fact, and mixed

fact and law, that were essential to the decision. *Commissioner* v. *Sunnen*, 333 U. S. 591, 601-602; *Tait* v. *Western Maryland R. Co.*, 289 U. S. 620 [1933]; *The Evergreens* v. *Nunan*, 141 F. 2d 927, 928 [(2d Cir.), cert. denied, 323 U. S. 720 (1944)]." 354 U. S. at 336; see Restatement, Judgments § 70, comment e.

The operative facts in this case, involving overseas and international air transportation, are different from those before the District of Columbia Circuit in the domestic charter case. Separate exhibits relating to each area were admitted in the proceedings before the Board. In their opinions the Board and examiner considered each area separately, noting, for example, the different amounts of charter traffic involved and the different consequences, in terms of potential diversion of passengers from the regularly scheduled carriers, that inclusive tours would have in each market. The orders here challenged became final at a different time and are clearly distinguishable from those involved in the domestic charter litigation.

None of the cases cited by the Board supports the conclusion that principles of *res judicata* preclude litigation of the question of law here involved. For example, the "order" challenged in *Cities Service Co.* v. *Securities and Exchange Comm'n*, 257 F. 2d 926 (3d Cir. 1958) was merely a phase of the order which had been previously upheld by this court in *Cities Service Co.* v. *Securities and Exchange Comm'n*, 247 F. 2d 646 (2d Cir. 1957), cert. denied, 355 U. S. 912 (1958). Petitioner was thus properly precluded from relitigating the issue. *Bartsch* v. *Washington Metropolitan Area Transit Comm'n*, 357 F. 2d 923 (4th Cir. 1966) is distinguishable on similar grounds.

This court has said that "the law of collateral estoppel is 'growing law.'" *United States* v. *Russell*

Mfg. Co., 349 F. 2d 13, 18-19 (2d Cir. 1965); see also *B. R. DeWitt, Inc.* v. *Hall*, 19 N. Y. 2d 141, 278 N. Y. S. 2d 596 (1967). Nevertheless judicial aversion to forum shopping is not a sufficient ground for precluding litigation of a question of law by extending the doctrine of *res judicata* into areas traditionally governed by "the ordinary rule of stare decisis." *Commissioner* v. *Sunnen, supra*, 333 U. S. at 601; cf. *Island Airlines, Inc.* v. *Civil Aeronautics Board*, 363 F. 2d 120, 123 (9th Cir. 1966). We therefore consider ourselves free "to make an independent examination of the legal matters at issue." *Commissioner* v. *Sunnen, supra*, 333 U. S. at 601.

IV.

The question before us is whether the Board's statutory authority to issue certificates of public convenience and necessity for "supplemental air transportation," defined as "charter trips in air transportation," (Section 101(33) of the Act, 49 U. S. C. § 1301(33)) includes the power to authorize inclusive tour charters.[8] Consideration of the legislative history of the Act leads us to the conclusion that the term "charter trips" was not intended to embrace the inclusive tour charters authorized by the Board's orders.

The provisions in question were added to the Federal Aviation Act by Public Law 87-528. As we have

[8] The question presented is not whether Congress withdrew from the Board a pre-existing power to grant inclusive tour authority. "[P]rior to 1962 the Board had never authorized inclusive tour authority for the supplementals." *American Airlines* v. *Civil Aeronautics Board, supra*, 365 F. 2d at 946. See also Hearings Before the Aviation Subcommittee of the Senate Committee on Commerce, 87th Cong., 1st Sess. 111 (1961).

pointed out this amendatory legislation established a comprehensive system for the certification and regulation of supplemental air carriers. Its principal purposes were to clarify the permissible field of operations of the supplemental carriers,[9] to assure their economic viability, to eliminate marginal and unsafe operators and "to maintain the regulatory scheme of the Federal Aviation Act and the protection of the certificated carriers such as petitioners by eliminating unregulated individually ticketed point-to-point competition from the supplementals." *American Airlines, Inc.* v. *Civil Aeronautics Board, supra,* 365 F. 2d at 944-45; see authorities cited *id.*, at n. 8.

The bill which evolved into Public Law 87-528 was prepared by the Board and introduced in both houses of Congress early in the 87th Congress. See S. 1969, 87th Cong., 1st Sess. (1961); H. R. 7318 87th Cong., 1st Sess. (1961). Also introduced in the House was a bill proposed by the supplemental air carriers, H. R. 7512, 87th Cong., 1st Sess. (1961).

The definition of "supplemental air transportation" found in the Board's bill [10] would have permitted the

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[9] The statute was in part a response to the decisions in *United Air Lines* v. *Civil Aeronautics Board,* 278 F. 2d 446 (D.C. Cir.), vacated, 364 U.S. 297 (1960) and *American Airlines* v. *Civil Aeronautics Board,* 235 F. 2d 845 (D.C. Cir. 1956), cert. denied, 353 U.S. 905 (1957), which the Board thought had placed in doubt the statutory basis for the continued operation of supplemental carriers under existing law. See Hearings Before the Aviation Subcommittee of the Senate Committee on Commerce, 87th Cong., 1st Sess. 5, 281-83 (1961); Hearings Before a Subcommittee of the House Committee on Interstate and Foreign Commerce, 87th Cong., 1st Sess. 10, 13, 29 (1961).

[10] The Board's bill provided:

"(32) 'Supplemental air carrier' means an air carrier holding a certificate of public convenience and necessity

Board to certify supplemental air carriers to perform a broad range of services including not only existing charter services but also the limited individually ticketed transportation for the general public that was then permitted under temporary legislation passed by Congress. See Public Law 86-661, 74 Stat. 527 (1960); H. R. 7318, Section 2, 87th Cong., 1st Sess. (1961); see also Public Law 87-528, Section 7, reprinted after 49 USC § 1371. The definition contained in the bill proposed by the supplemental carriers went even further. It would have authorized "unlimited charter operations on a planeload basis for the carriage of passengers and property . . . with the word 'charter' herein being defined as air transportation performed pursuant to an agreement for the use of the entire capacity of an aircraft . . . ." H. R. 7512, 87th Cong., 1st Sess. (1961). It also would have permitted "individually ticketed passenger . . . operations . . . in interstate, overseas and territorial air transportation." *Ibid.*

Hearings at which representatives of the Board, the scheduled aircarriers and the supplementals all testified were held in June, 1961, before the Aviation Subcommittee of the Senate Committee on Commerce and before a Subcommittee of the House Committee on Interstate and Foreign Commerce. At the hear-

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authorizing it to engage in supplemental air transportation.

"(33) 'Supplemental air transportation' means air transportation rendered pursuant to a certificate of public convenience and necessity which contains such limitations as to frequency of service, size or type of equipment, or otherwise, as will assure that the service so authorized remains supplemental to the service authorized by certificates of public convenience and necessity issued pursuant to sections 401(d)(1) and (2) of this Act."

ings the Board made clear its opposition to any arrangement that would permit travel agents to solicit the general public in forming charter groups. See, e.g., Senate Hearings, *supra* n. 9, at 29.

Following the hearings each committee reported out its own bill. Under the Senate Bill the Board was expressly empowered to authorize supplemental carriers to operate inclusive tours.[11] With the express exception of the "all expense-paid tour," the Senate bill was intended to prevent the Board from authorizing "individually ticketed service whether offered by an air carrier directly or by a travel agent." S. Rep. No. 688, 87th Cong., 1st Sess, 13-14 (1961). However it did not, as the Board contends, require that supplementals be certificated to operate inclusive tours. Its language was merely permissive, authorizing the Board to grant such authority when required by the public need and consistent with the capability and interests of the particular carrier. "[T]he bill does not require the Board to grant every supplemental carrier any particular charter authority." See S. Rep. No. 688, 87th Cong., 1st Sess. 12-13 (1961).

The bill passed the Senate on August 28, 1961.

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[11] The bill defined "charter service" to mean:

> "air transportation performed by an air carrier holding a certificate of public convenience and necessity where the entire capacity of one or more aircraft has been engaged for the movement of persons and their baggage or for the movement of property on a time, mileage, or trip basis, but shall not include transportation services offered by an air carrier to individual members of the general public or performed by an air carrier under an arrangement with any person who provides or offers to provide transportation services to individual members of the general public, other than as a member of a group on an all-expense-paid tour."

The bill reported out by the House Committee, like the Senate bill, worked substantial changes in the legislation drafted by the Board. However, unlike the Senate bill, the House version did not define the term charter although that term is found in the bill's definition of supplemental air transportation.[12] The definition of "supplemental air transportation" included in the House bill was ultimately enacted by Congress as part of Public Law 87-528. See 49 U. S. C. § 1301(33).

Of particular importance in deciding what was the intended scope of the Board's powers under this bill which was passed by the House on September 18, 1961, is the statement of the House Committee that its bill "would give the Board some, but not all, of the authority requested by it. The committee substitute would establish guidelines for the Board to follow in exercising its authority to certificate supplemental carriers, especially, in the field of individually ticketed operations." H. R. Rep. No. 1177, 87th Cong., 1st Sess. 6-7 (1961).

In deciding whether grant of inclusive tour authority violates the limitations of the statute it must be remembered "that a prime concern of Congress was to maintain the integrity of the charter concept—to preserve the distinction between group and individually ticketed travel." *American Airlines* v. *Civil Aeronautics Board*, *supra*, 348 F. 2d at 354. See Conference Report, H. R. Rep. No. 1950, 87th Cong., 2d Sess. 14 (1962).

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[12] "(33) 'Supplemental air transportation' means charter trips in air transportation, other than the transportation of mail by aircraft, rendered pursuant to a certificate of public convenience and necessity issued pursuant to section 401(d)(3) of this Act to supplement the scheduled service authorized by certificates of public convenience and necessity issued pursuant to sections 401(d)(1) and (2) of this Act."

It is clear that the fact that the Board has the power to define "charter" to include split charters (see *American Airlines* v. *Civil Aeronautics Board*, *supra*, 348 F. 2d 349), a device permitting the Masons and Elks each to charter one half of the capacity of an aircraft, does not mean that the Board is free to adopt a definition that contravenes basic policies laid down in the Act. To permit the selling of individual tickets to the general public in direct competition with the regularly scheduled airlines, regardless of whether such selling is done through the medium of a travel agent who has first "chartered" the plane, does violate basic policies of the Act. Any lingering ambiguities clouding this issue are dispelled by the subsequent history of the House and Senate bills, to which we now turn.

The conflicting House and Senate bills were submitted to a Conference Committee which reported out a substitute bill that was ultimately enacted as Public Law 87-528. The substitute followed the House version, eliminating the definition of the term "charter" found in the Senate bill. It is clear from the conference report that one purpose of the Committee in adopting the provisions of the House bill was to prohibit "individually ticketed and waybilled services on a permanent basis." [13] See Conference Report, H. R.

[13] The statute as enacted permits only two exceptions to the general rule forbidding supplemental carriers to provide individually ticketed services. The first exception, Section 9 of Public Law 87-528 provided a two year period, now expired, during which the Board could authorize such services in order "to permit an orderly transition to an all-charter operation." Reprinted following 49 U.S.C. § 1371; See Conference Report, H. R. Rep. No. 1950, 87th Cong., 2d Sess. 7, 14 (1962). The second authorizes the Board to issue a "special operating authorization" for a period of 30 days subject to renewal for a maximum of 60 additional days. Such authorization, enabling

Rep. No. 1950, 87th Cong., 2d Sess. 14 (1962).

Even more direct and more persuasive evidence is available concerning the intention of the conferees in striking from the bill the provision that would have permitted all expense package tours. Several of the bill's floor managers addressed themselves to this subject during the debate on the bill in their respective houses. They were unanimous in declaring that the "all-expense tours that were provided for in the Senate definition were not accepted by the House, and the Senate receded and concurred in [the House's] position on that." 108 Cong. Rec. 12322 (June 29, 1962) (remarks of Rep. Williams); see remarks of Rep. Walter, *ibid.* Their statements as to this limitation on the Board's authority went unchallenged.

For example, Senator Scott stated:

> "The Senate bill proposed to modify the established concept of charter by permitting charters to 'a group on an all-expense-paid tour.' Such a group could have been assembled from the general public . . . .
>
> The committee of conference wisely eliminated the Senate provision. The bill thus, in effect, confirms the established law as to a charter in air

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a supplemental carrier to engage in individually ticketed operations, could be issued only on a showing that "the capacity for air transportation being offered by the holder of a certificate of public convenience and necessity between particular points in the United States is, or will be, temporarily insufficient to meet the requirements of the public or the postal service," or that there is a temporary requirement for such service between two points not regularly served by a scheduled carrier. Section 417 of the Act, 49 U.S.C. § 1387; see Conference Report, H. R. Rep. No. 1950, 87th Cong., 2d Sess. 4 (1962); H. R. Rep. No. 1177, 87th Cong., 1st Sess. 2, 12-13 (1961).

transportation. There should be no question about that, The Congress has considered, and has rejected, a proposal to change the established meaning of charter so as to have permitted travel agent charters for all-expense tours. Such charters have no place in air transportation." 108 Cong. Rec. 12284-85 (June 29, 1962).

Senator Thurmond stated:

"I am advised that the CAB Bureau of Economics has advocated that a so-called all-expense tour concept be grafted onto the existing charter definition. This would be intolerable, and has been expressly rejected by the conferees. The Senate receded from its charter definition which included this all-expense tour provision." 108 Cong. Rec. 12285 (June 29, 1962).

In the House, Representative Harris, Chairman of the House Interstate Commerce Commission, made clear that while "the Senate proposed to change the well established meaning of 'charter,' " the House objected to the change.

"A charter in the aviation field has always meant the engagement of the entire capacity of the aircraft for a particular purpose by a single engaging party. Travel agents, being agents for transportation services, rather than carriers themselves, have never been allowed to engage airplanes in their own name for their own account. Nor should they be allowed to. That is why the House objected to the proposal of the Senate including the 'all-expense tour' language. As explained in the House report, we felt the Board should be in a position to deal effectively with any efforts to abuse the meaning of charter." 108 Cong. Rec. 12322 (June 29, 1962).

He went on to read a statement, identical to one submitted later by Representative Collier:

"The bill, as reported by the conference committee, contains no definition of charter. The law is well established that, in air transportation, charter means essentially the lease of the entire capacity of an aircraft for a period of time or a particular trip, for the transportation of cargo or persons and baggage, on a basis which does not include solicitation of the general public, or any device where individually ticketed services would be offered or performed under guise of charter. The basic concept being thus clear, it is important that the Civil Aeronautics Board, by regulation and other appropriate measures, make sure that charter serves its planeload service concept and is not employed as a subterfuge to perform individually ticketed services. Manifestly, the nature of such subterfuge may change from time to time, and the regulatory agency needs some flexibility to modify its regulations to guard against any new subterfuges that may emerge. For this reason, the House committee objected to any attempt to freeze into the act a definition of charter service which would prevent the Board from dealing effectively with abuses. Thus the bill, as passed by the House, contained no definition of charter.

The Senate bill, on the other hand, contained a definition of charter service. This was necessary, in large part, because the Senate proposed to modify the established concept of charter in order to permit carriage, as charter of 'a group on an all-expense paid tour.' The Senate conferees having receded from insistence on the all-expense-paid tour exception, it followed that the

remainder of the Senate definition was superfluous since it merely stated established law and policy." 108 Cong. Rec. 12322 (June 29, 1962); see *id.* at 12324 (remarks of Rep. Collier).

Senator Cotton said:

> "The conferees agreed to drop the language in the Senate bill which defined charter service, and permitted the sale of tickets on charter flights to individual members of the general public who were on all-expense-paid tours. I am wholly in accord with the action in eliminating the all-expense tour provision and thus refusing to confer this power on the Board." 108 Cong. Rec. 12284 (June 29, 1962).

These statements are specific in rejecting the notion that the term charter can be construed to include all expense tours. We therefore reject the argument that the legislators' concern was with abuses growing out of the Board's prior practice of allowing supplemental carriers to perform limited scheduled individually ticketed travel. Regardless of the extent to which there may have been legislative concern based on this prior experience, indeed whether or not the expression of concern was misguided or wholly unwarranted, it was in fact manifested in a congressional declaration binding on both the Board and this court, that was clearly intended to forbid the Board to authorize inclusive tours.

The Board also argues that many of the statements made on the floor of Congress were directed against split charters as such, and that the Board's power to authorize such charters has nevertheless been upheld. See *American Airlines* v. *Civil Aeronautics Board*, *supra*, 348 F. 2d 349. While we have no occasion to pass on the question of the propriety of split charters

we note that Congressional concern with their potential impact is much less clear from the Committee reports and hearings than is the intention to prohibit individually ticketed operations in whatever guise, by supplemental carriers. Moreover, the legislative history involved in the inclusive tour question, with one house passing legislation that would have specifically empowered the Board to authorize package tours only to have the provision deleted by the Conference Committee with the floor managers unanimous in their explanations of the change, is not repeated in the case of split charters. See, e.g., 108 Cong. Rec. 12283 (June 29, 1962) (remarks of Sen. Monroney). On the contrary, the provision deleted from the Senate bill would in fact have forbidden split charters. See Section 101(13) of the bill, S. Rep. No. 688, 87th Cong., 1st Sess. 13, 22 (1961) (reprinted n. 11 *supra*).

But the Board urges that in construing the statute we should not give any weight to statements made in floor debate. In determining whether it had the power to authorize inclusive tours, the Board, finding the statute and committee reports clear, declared that there was "no sound reason for attempting to analyze the statements made at the time of the passage of the bill by certain of its floor managers." Board Order E-23350 (March 11, 1966).

We do not agree. That Congress adopted the House version of the bill, specifically rejecting the Senate's conflicting version, is of course an extremely significant factor in determining what was Congress' intention with respect to the matters in issue. See, e.g., *First Nat'l Bank* v. *Walker Bank*, 385 U. S. 252, 258 (1966). It would be foolish, indeed, to disregard the one source of legislative history that explains the reasons for the conference committee's action.

Nor are we here concerned with general remarks made in debate which contradict either the face of the statute or statements in committee reports. On the contrary, we have before us on the one hand a statute that is not clear on its face and committee reports that seem to support petitioners' view although they can perhaps be deemed ambiguous. On the other hand we have statements made by the floor managers that fully explain the changes in the bill. These floor managers were members of the legislative committees that held extensive hearings and were responsible for formulating the legislation.[14]

Only recently, in circumstances similar to those in the instant case, a unanimous Supreme Court relied on statements made in debate, not only by a sponsor of legislation and by a member of the Conference Committee but also by other members of Congress, and regarded such statements as authoritative indicators of congressional intent. *First Nat'l Bank* v. *Walker Bank, supra,* 385 U. S. at 258-60; see also *Brown Shoe Co.* v. *United States,* 370 U. S. 294, 311-23 (1962).

The authorities cited by the Board do not support the view that we may disregard or give little or no weight to statements made on the floor of Congress under the circumstances of this case. In *United States* v. *International United Automobile Workers (UAW-CIO),* 352 U. S. 567 (1957) although the Court did say that debate is not entitled to the same

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[14] For example, Representative Harris was the Chairman of the House Committee on Interstate and Foreign Commerce, Representative Williams was Chairman of the Subcommittee on Transportation and Aeronautics of which Representative Collier was a member, Senator Monroney was chairman of the Subcommittee on Aviation, Senators Thurmond, Cotton, Morton and Scott were on that committee.

weight "as carefully considered committee reports," it still examined the debate, finding that it confirmed what was contained in the reports. 352 U. S. at 586-87 & n. 1. *Duplex Printing Press Co.* v. *Deering*, 254 U. S. 443, 474-75 (1921) exhibits a similar treatment of Congressional debate. *Nicholas* v. *Denver & Rio Grande W. R. R.*, 195 F. 2d 428, 431-32 (10th Cir. 1952), whatever dictum the opinion may contain to the contrary, fully supports the position that we take here.

If, as we hold, Congress did not give the Board power to authorize inclusive tours, it is immaterial whether, as the Board contends, the proposed regulations will be effective in curbing abuses of the inclusive tour certificates.

Since the Motor Carrier Act is quite different from the Federal Aviation Act in language, statutory structure and legislative history, the fact that all expense tours have been approved under the Motor Carrier Act (see *National Bus Traffic Ass'n* v. *United States*, 143 F. Supp. 689 (D. N. J. 1956), aff'd *per curiam*, 352 U. S. 1020 (1957)), is not at all persuasive in construing Public Law 87-528, even if we assume that the tours there authorized are similar to those approved by the Board in this case, an assumption that petitioners vigorously contest.

We hold that the certificates before us awarding inclusive tour authority to supplemental air carriers in foreign and overseas transportation are invalid.

Since our conclusion that the Board acted in excess of its statutory powers is dispositive of the case, we need not pass on the other points raised by petitioners.

The orders are set aside and the case remanded to the Board for further proceedings not inconsistent with this opinion.

APPENDIX B

Order No. E-24240

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD

WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 11th day of March, 1966

Docket 11908 *et al.*

REOPENED TRANSATLANTIC CHARTER INVESTIGATION
(ALL EXPENSE TOUR PHASE)

ORDER

A full public hearing having been held in the above-entitled proceeding and the Board, upon consideration of the record, having issued its opinion containing its findings, conclusions, and decision which is attached hereto and made a part hereof;

IT IS ORDERED:

1. That amended certificates of public convenience and necessity for transatlantic supplemental air transportation in the forms attached hereto be issued to Capitol Airways, Inc., and Saturn Airways, Inc.

2. That said certificates shall be signed on behalf of the Board by its Secretary, shall have affixed thereto the seal of the Board, and, subject to extension of their effective dates in accordance with the provisions of said certificates, shall be effective on November 26, 1966.

3. That inclusive tour charter authority be awarded to any supplemental air carrier hereafter certificated in the *Reopened Transatlantic Charter Investigation*, Docket 11908 *et al.*, such authority to terminate on April 18, 1969.

4. That this order shall be effective upon the date of its approval by the President of the United States.

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

THE WHITE HOUSE

APPROVED:

LYNDON B. JOHNSON
September 27, 1966

Issued pursuant to
Order No. E-24240

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR SUPPLEMENTAL AIR TRANSPORTATION

CAPITOL AIRWAYS, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and their personal baggage, as follows:

> Between points in the 48 contiguous States of the United States of America, on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa, and Asia, as far east as (and including) India, on the other hand.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regulations for transatlantic supplemental air transportation.

The holder shall not (a) advertise its services or hold itself out to the public as an air carrier authorized to engage in air transportation unless it includes the words "supplemental air carrier" in such advertising; or (b) conduct business in any name other than that set forth in this certificate, except as expressly authorized by the Board.

Control of the holder shall not, without prior application to and approval by the Board, be transferred,

directly or indirectly, by assignment, transfer of voting stock, or otherwise, to any person who controlled, or participated in control of, as a partner, officer, or director, any air carrier theretofore found by the Board to have committed knowing and willful violations of the Civil Aeronautics Act of 1938, as amended, the Federal Aviation Act of 1958, or any order, rule, or regulation issued pursuant to said Acts during the period such person controlled or participated in the control of said air carrier. Any such application may be approved by the Board with or without hearing. No such application shall be denied unless the Board finds, after notice to the holder and the parties to the proposed transfer, and after opportunity for hearing, that, in the event the proposed transfer is consummated, the holder will thereby be rendered unfit, unwilling, or unable to conform to the provisions of the Federal Aviation Act of 1958, and the rules, regulations, and requirements of the Board thereunder. For the purposes of this paragraph, a transfer of 20 per cent or more of the voting stock of the holder shall be deemed to constitute *prima facie* evidence of a transfer of control so as to require the filing of an appropriate application with the Board.

Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms,

conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

This certificate shall be effective on November 26, 1966, and shall terminate on April 18, 1969: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideraton of the Board's order of March 11, 1966 (Order E-24240), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 11th day of March, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate to the holder approved by the President of the United States on September 27, 1966 in Order E-24240.

[The certificate issued to Saturn Airways, Inc., which is identical to the above has been omitted]

Order No. E-24241

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 11th day of March, 1966

Docket 11908 *et al.*

REOPENED TRANSATLANTIC CHARTER INVESTIGATION
(ALL-EXPENSE TOUR PHASE)

ORDER

A full public hearing having been held in the above-entitled proceeding and the Board, upon consideration of the record, having issued its opinion which is attached hereto and made a part hereof;

IT IS ORDERED:

1. That there be and hereby are adopted and issued concurrently herewith amendments to Parts 295 and 378 of the Board's Regulations, which are attached hereto and made a part hereof.[1]

2. That said amendments shall be effective on November 26, 1966.

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

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[1] For administrative convenience we have combined into a single amendment to Part 378 the revisions required by the decision in the instant proceeding as well as the decision in the foreign phase of the *Supplemental Air Service Proceeding*, Docket 13795 *et al.*

Regulation No. ER-475

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Economic Regulations Amendment No. 7 to Part 295
Effective: November 26, 1966
Adopted: March 11, 1966

PART 295—TRANSATLANTIC SUPPLEMENTAL AIR TRANSPORTATION REDEFINITION OF "CHARTER FLIGHT" TO INCLUDE INCLUSIVE TOUR CHARTERS

The Board has determined in the *Reopened Transatlantic Charter Investigation (All-expense Tour Phase)*, Docket 11908, *et al.*, to grant inclusive tour charter authority to Capitol Airways, Inc., Saturn Airways, Inc., and any supplemental air carrier subsequently certificated in the transatlantic market in that proceeding.[1] Such authority involves the charter of supplemental carrier aircraft to tour operators who in turn sell the inclusive tours to individual members of the general public.[2] It therefore becomes necessary to contemporaneously expand the definition of "charter flight," as contained in Part 295 of the Economic Regulations, to include inclusive tour charters.[3] In-

[1] Order E-24240.

[2] Part 378 of the Board's Special Regulations, which contains the regulatory provisions governing inclusive tour operations, is being amended concurrently herewith to cover transatlantic inclusive tours.

[3] In view of the extensive application and reporting requirements imposed by Part 378, the operation of inclusive tour charters is being exempted from the condition that a "Statement of Supporting Information" be executed prior to any supplemental air transportation performed pursuant to Part 295.

asmuch as the question of whether such charters should be authorized in the transatlantic market has been fully litigated in Docket 11908, *et al.*, we believe that further notice and public procedure on this amendment are unnecessary and not in the public interest.

Accordingly, the Board hereby amends Part 295 of its Economic Regulations effective November 26, 1966, as follows:

1. By amending § 295.2(b) to read as follows:

§ 295.2 *Definitions.*

As used in this part, unless the context otherwise requires—

* * * * *

(b) "Charter flight" means air transportation performed by a direct air carrier on a time, mileage or trip basis where (1) the entire capacity of one or more aircraft has been engaged for the movement of persons and their personal baggage—

(i) By a person for his own use (including a direct air carrier when such aircraft is engaged solely for the transportation of company personnel or commercial passenger traffic in cases of emergency);

(ii) By a representative (or representatives acting jointly) of a group for the use of such group (provided no such representative is professionally engaged in the formation of groups for the transportation or in the solicitation or sale of transportation services); or

(iii) By a tour operator as defined by Part 378 of this chapter; or (2) one-half the capacity of an aircraft has been engaged by a person for his own use or by a representative or representatives of a group for the use of such group and the remaining half of

the capacity of such aircraft has been engaged by another person for his own use or by a representative or representatives of a second group (provided no such representative is professionally engaged in the formation of groups for the transportation or in the solicitation or sale of transportation services).

With the consent of the charterer, the direct air carrier may utilize any unused space for the transportation of the carrier's own personnel and property.

2. By revising § 295.5(a) to read as follows:

§ 295.5 *Records and record retention.*

(a) Prior to performing any supplemental air transportation pursuant to this part, the carrier shall execute, and require the travel agent (if any) and charterer to execute, the form "Statement of Supporting Information" attached hereto and made a part hereof: *Provided,* That this requirement shall not apply to inclusive tour charters.

(Section 204(a) of the Federal Aviation Act of 1958; 72 Stat. 743; 49 U.S.C. 1324. Interpret or apply sections 401(d)(3), 401(n); 76 Stat. 143, 144; 49 U.S.C. 1371.)

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

NOTE: This is amendment No. 7 to Part 295 effective April 30, 1964.

Regulation No. SPR-16

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Special Regulations Amendment No. 2 to Part 378
Effective: November 26, 1966
Adopted: March 11, 1966

PART 378—INCLUSIVE TOURS BY SUPPLEMENTAL AIR CARRIERS AND TOUR OPERATORS

EXPANSION OF COVERAGE TO OVERSEAS AND FOREIGN AIR TRANSPORTATION

Part 378 of the Board's Special Regulations (14 CFR Part 378), which contains the regulatory provisions governing the operation of inclusive tour charters, was originally issued [1] in conjunction with the Board's decision in the domestic phase of the *Supplemental Air Service Proceeding*, Docket 13795, *et al.*[2] In order to correspond with the scope of authority granted to supplemental air carriers in that decision, the regulation as then adopted pertains only to inclusive tours in interstate air transportation.

To correspond with authorizations being awarded as a result of the Board's final decisions in the foreign and overseas phase of the *Supplemental* case [3] and in the *Reopened Transatlantic Charter Investigation (All-expense Tour Phase)*, Docket 11908, *et al.*,[4] which

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[1] Regulation No. SPR-14, adopted March 11, 1966, and published in 31 F.R. 4779.

[2] Order E-23350.

[3] Order E-24237.

[4] Order E-24240.

are being issued concurrently herewith, we are amending Part 378 to expand its coverage to inclusive tours in overseas and foreign air transportation. In view of the fact that the regulatory problems with respect to such authority were dealt with by the Board in the above-mentioned proceedings, and because parties to the rule making were heretofore given the opportunity to comment on this matter [5], further notice and public procedure on the amendments involved herein are unnecessary and not in the public interest.

Accordingly, the Board hereby amends Part 378 of its Special Regulations effective November 26, 1966, as follows:

1. By revising § 378.1 to read as follows:

§ 378.1 *Applicability.*

This part establishes the terms and conditions governing the furnishing of inclusive tours in interstate, overseas and foreign air transportation by supplemental air carriers and tour operators. This part also relieves tour operators from various provisions of the Act and the Board's regulations for the purpose of enabling them to provide inclusive tours to members of the general public utilizing aircraft chartered from supplemental air carriers. The provisions of this regulation shall not be construed as limiting any other authority to engage in air transportation issued by the Board. Nothing contained in this part shall

[5] Part 378 as originally proposed pertained to interstate and *overseas* air transportation (Notice of Proposed Rule Making SPDR-6, January 5, 1965, 30 F.R. 281). Moreover, the proposed regulation was amended to cover *foreign* air transportation (Supplemental Notice of Proposed Rule Making, SPDR-6B, October 11, 1965, 30 F.R. 13077). Comments concerning both of these Notices were received, as set forth in SPR-14, *supra*, and have been considered by the Board.

be construed as repealing or amending any provision of any of the Board's regulations, unless the context so requires.

2. By revising § 378.2(a) to read as follows:

§ 378.2 *Definitions.*

As used in this part, unless the context otherwise requires—

(a) "Inclusive tour charter" means the charter of an entire aircraft by a tour operator for the carriage by a supplemental air carrier of persons traveling in air transportation on inclusive tours.

(Sections 101(3), 204(a), 401, 409 and 414 of the Federal Aviation Act of 1958, as amended, (72 Stat. 737; 49 U.S.C. 1301; 72 Stat. 743; 49 U.S.C. 1324; 72 Stat. 754 as amended by 76 Stat. 143; 49 U.S.C. 1371; 72 Stat. 768; 49 U.S.C. 1379; 72 Stat. 770; 49 U.S.C. 1384) and section 7 of Public Law 87-528 (76 Stat. 146; 49 U.S.C. 1371).)

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

Note: This is Amendment No. 2 to Part 378 effective May 13, 1966.

Order No. E-24237

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 11th day of March, 1966

Docket 13795 *et al.*

SUPPLEMENTAL AIR SERVICE PROCEEDING

ORDER

A full public hearing having been held in the above-entitled proceeding and the Board, upon consideration of the record, having issued its opinion containing its findings, conclusions, and decision;

IT IS ORDERED:

1. That certificates of public convenience and necessity for supplemental air transportation in the forms attached hereto be issued to American Flyers Airline Corp., Capitol Airways, Inc., Johnson Flying Service, Inc., Modern Air Transport, Inc., Purdue Aeronautics Corp., Saturn Airways, Inc., Southern Air Transport, Inc., Trans International Airlines, Inc., World Airways, Inc., and Zantop Air Transport, Inc.

2. That said certificates shall be signed on behalf of the Board by its Secretary, shall have affixed thereto the seal of the Board, and, subject to extension of their effective dates in accordance with the provisions of said certificates, shall be effective on November 26, 1966.

3. That all applications consolidated herein for supplemental certificates insofar as such applications seek authority for overseas and/or foreign air transportation and/or air transportation between places in the same territory or possession heretofore filed by Conner Air Lines, Inc., Holiday Airways, Inc., Stewart Air Service, and United States Overseas Airlines, Inc., be and they hereby are denied.

4. That, except to the extent otherwise indicated, all applications consolidated herein for supplemental certificates, insofar as such applications seek authority for overseas and/or foreign air transportation and/or air transportation between places in the same territory or possession, heretofore filed by the carriers listed in paragraph 1 of this order be and they hereby are denied.

5. That this order shall be effective upon the date of its approval by the President of the United States.

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

THE WHITE HOUSE

APPROVED:

LYNDON B. JOHNSON

September 27, 1966

Issued pursuant to
Order No. E-24237

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR SUPPLEMENTAL AIR TRANSPORTATION

AMERICAN FLYERS AIRLINE CORP.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and property, as follows:

1. Between any point in any State of the United States or the District of Columbia, on the one hand, and
   (a) points in Canada and Mexico, on the other hand;
   (b) points in Jamaica, the Bahama Islands, Bermuda, Haiti, the Dominican Republic, Puerto Rico, the Virgin Islands, Trinidad, Aruba, the Leeward and Windward Islands, and any other place located in the Gulf of Mexico or the Caribbean Sea, on the other hand.
2. In overseas and foreign air transportation, and in air transportation between places in the same territory or possession of the United States,

pursuant to contracts with the Department of Defense.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regulations for supplemental air transportation and to the following additional terms, conditions, and limitations:

(1) Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

(2) The exercise of the authority granted herein shall be subject to there first being obtained from the appropriate foreign governments such operating rights as may be necessary. The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

(3) Charter services performed by the holder for the Department of Defense shall be furnished at the rates and compensation computed on a basis no lower than the basis of computation of compensation now or hereafter specified by the Board in applicable rules, regulations, or orders.

This certificate shall be effective on November 26, 1966: *Provided, however,* That prior to the date on

which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of March 11, 1966 (Order E-24237), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

The authority to engage in supplemental air transportation as provided in paragraph 1 shall terminate five years after the effective date of this certificate.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 11th day of March, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate to the holder approved by the President of the United States on September 27, 1966. in Order E-24237.

Issued pursuant to
Order No. E-24237

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR SUPPLEMENTAL AIR TRANSPORTATION

CAPITOL AIRWAYS, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and property, as follows:

1. Between any point in any State of the United States or the District of Columbia, on the one hand, and points in Jamaica, the Bahama Islands, Bermuda, Haiti, the Dominican Republic, Puerto Rico, the Virgin Islands, Trinidad, Aruba, the Leeward and Windward Islands, and any other place located in the Gulf of Mexico or the Caribbean Sea, on the other hand.
2. In overseas and foreign air transportation, and in air transportation between places in the same territory or possession of the United States, pursuant to contracts with the Department of Defense.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regulations for supplemental air transporta-

tion and to the following additional terms, conditions, and limitations:

(1) Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

(2) The exercise of the authority granted herein shall be subject to there first being obtained from the appropriate foreign governments such operating rights as may be necessary. The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

(3) Charter services performed by the holder for the Department of Defense shall be furnished at the rates and compensation computed on a basis no lower than the basis of computation of compensation now or hereafter specified by the Board in applicable rules, regulations, or orders.

This certificate shall be effective on November 26, 1966: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of March 11, 1966

(Order E-24237), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

The authority to engage in supplemental air transportation as provided in paragraph 1 shall terminate five years after the effective date of this certificate.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 11th day of March, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate to the holder approved by the President of the United States on September 27, 1966 in Order E-24237.

Issued pursuant to
Order No. E-24237

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR SUPPLEMENTAL AIR TRANSPORTATION

MODERN AIR TRANSPORT, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and property, as follows:

1. Between any point in any State of the United States or the District of Columbia, on the one hand, and points in Canada and Mexico, on the other hand.
2. In overseas and foreign air transportation, and in air transportation between places in the same territory or possession of the United States, pursuant to contracts with the Department of Defense.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regulations for supplemental air transportation and to the following additional terms, conditions, and limitations:

(1) Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties

and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

(2) The exercise of the authority granted herein shall be subject to there first being obtained from the appropriate foreign governments such operating rights as may be necessary. The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

(3) Charter services performed by the holder for the Department of Defense shall be furnished at the rates and compensation computed on a basis no lower than the basis of computation of compensation now or hereafter specified by the Board in applicable rules, regulations, or orders.

This certificate shall be effective on November 26, 1966: *Provided, however*, That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of March 11, 1966 (Order E-24237), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

The authority to engage in supplemental air transportation as provided in paragraph 1 shall terminate five years after the effective date of this certificate.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 11th day of March, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate to the holder approved by the President of the United States on September 27, 1966 in Order E-24237.

Issued pursuant to
Order No. E-24237

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR SUPPLEMENTAL AIR TRANSPORTATION

JOHNSON FLYING SERVICE, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and property, as follows:

1. Between any point in any State of the United States or the District of Columbia, on the one hand, and points in Canada, on the other hand.
2. In overseas and foreign air transportation, and in air transportation between places in the same territory or possession of the United States, pursuant to contracts with the Department of Defense.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regulations for supplemental air transportation and to the following additional terms, conditions, and limitations:

(1) Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties

and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

(2) The exercise of the authority granted herein shall be subject to there first being obtained from the Canadian Government such operating rights as may be necessary. The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

(3) Charter services performed by the holder for the Department of Defense shall be furnished at the rates and compensation computed on a basis no lower than the basis of computation of compensation now or hereafter specified by the Board in applicable rules, regulations, or orders.

This certificate shall be effective on November 26, 1966: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of March 11, 1966 (Order E-24237), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

The authority to engage in supplemental air transportation as provided in paragraph 1 shall terminate five years after the effective date of this certificate.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 11th day of March, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate to the holder approved by the President of the United States on September 27, 1966 in Order E-24237.

Issued pursuant to
Order No. E-24237

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR SUPPLEMENTAL AIR TRANSPORTATION

PURDUE AERONAUTICS CORPORATION

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and property, as follows:

1. Between any point in any State of the United States or the District of Columbia, on the one hand, and points in Canada, on the other hand.
2. In overseas and foreign air transportation, and in air transportation between places in the same territory or possession of the United States, pursuant to contracts with the Department of Defense.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regulations for supplemental air transportation and to the following additional terms, conditions, and limitations:

(1) Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties

and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

(2) The exercise of the authority granted herein shall be subject to there first being obtained from the Canadian Government such operating rights as may be necessary. The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

(3) Charter services performed by the holder for the Department of Defense shall be furnished at the rates and compensation computed on a basis no lower than the basis of computation of compensation now or hereafter specified by the Board in applicable rules, regulations, or orders.

This certificate shall be effective on November 26, 1966: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of March 11, 1966 (Order E-24237), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

The authority to engage in supplemental air transportation as provided in paragraph 1 shall terminate five years after the effective date of this certificate.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 11th day of March, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate to the holder approved by the President of the United States on September 27, 1966 in Order E-24237.

Issued pursuant to
Order No. E-24237

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR SUPPLEMENTAL AIR TRANSPORTATION

SATURN AIRWAYS, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and property, as follows:

1. Between any point in any State of the United States or the District of Columbia, on the one hand, and points in Jamaica, the Bahama Islands, Bermuda, Haiti, the Dominican Republic, Puerto Rico, the Virgin Islands, Trinidad, Aruba, the Leeward and Windward Islands, and any other place located in the Gulf of Mexico or the Caribbean Sea, on the other hand.
2. In overseas and foreign air transportation, and in air transportation between places in the same territory or possession of the United States, pursuant to contracts with the Department of Defense.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regulations for supplemental air transporta-

tion and to the following additional terms, conditions and limitations:

(1) Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

(2) The exercise of the authority granted herein shall be subject to there first being obtained from the appropriate foreign governments such operating rights as may be necessary. The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

(3) Charter services performed by the holder for the Department of Defense shall be furnished at the rates and compensation computed on a basis no lower than the basis of computation of compensation now or hereafter specified by the Board in applicable rules, regulations, or orders.

This certificate shall be effective on November 26, 1966: *Provided, however,* That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of March 11, 1966 (Order E-24237), insofar as such order authorizes

the issuance of this certificate, may by order or orders extend such effective date from time to time.

The authority to engage in supplemental air transportation as provided in paragraph 1 shall terminate five years after the effective date of this certificate.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 11th day of March, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate to the holder approved by the President of the United States on September 27, 1966 in Order E-24237.

Issued pursuant to
Order No. E-24237

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR SUPPLEMENTAL AIR TRANSPORTATION

SOUTHERN AIR TRANSPORT, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and property, as follows:

1. Between any point in any State of the United States or the District of Columbia, on the one hand, and

   (a) American Samoa, Guam, Johnston Island, the Marshall Islands, Okinawa, Wake Island, and points in Australasia, Indonesia, and Asia as far west as longitude 70 degrees east via a transpacific routing, on the other hand;

   (b) points in Jamaica, the Bahama Islands, Bermuda, Haiti, the Dominican Republic, Puerto Rico, the Virgin Islands, Trinidad, Aruba, the Leeward and Windward Islands, and any other place located in the Gulf of Mexico or the Caribbean Sea, on the other hand.

2. In overseas and foreign air transportation, and in air transportation between places in the same territory or possession of the United States pursuant to contracts with the Department of Defense.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regulations for supplemental air transportation and to the following additional terms, conditions, and limitations:

(1) Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

(2) The exercise of the authority granted herein shall be subject to there first being obtained from the appropriate foreign governments such operating rights as may be necessary. The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

(3) Charter services performed by the holder for the Department of Defense shall be furnished at the rates and compensation computed on a basis no lower than the basis of computation of com-

pensation now or hereafter specified by the Board in applicable rules, regulations, or orders.

This certificate shall be effective on November 26, 1966: *Provided however*, That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of March 11, 1966 (Order E-24237), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

The authority to engage in supplemental air transportation as provided in paragraph 1 shall terminate five years after the effective date of this certificate.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 11th day of March, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate to the holder approved by the President of the United States on September 27, 1966 in Order E-24237.

Issued pursuant to
Order No. E-24237

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR SUPPLEMENTAL AIR TRANSPORTATION

TRANS INTERNATIONAL AIRLINES, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and property, as follows:

1. Between any point in any State of the United States or the District of Columbia, on the one hand, and

   (a) American Samoa, Guam, Johnston Island, the Marshall Islands, Okinawa, Wake Island, and points in Australasia, Indonesia, and Asia as far west as longitude 70 degrees east via a transpacific routing, on the other hand;

   (b) points in Jamaica, the Bahama Islands, Bermuda, Haiti, the Dominican Republic, Puerto Rico, the Virgin Islands, Trinidad, Aruba, the Leeward and Windward Islands, and any other place located in the Gulf of Mexico or the Caribbean Sea, on the other hand;

(c) points in British Honduras, the Canal Zone, Guatemala, Honduras, El Salvador, Nicaragua, Costa Rica, Panama, and in the countries on the continent of South America, on the other hand.

2. In overseas and foreign air transportation, and in air transportation between places in the same territory or possession of the United States pursuant to contracts with the Department of Defense.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regulations for supplemental air transportation and to the following additional terms, conditions, and limitations:

(1) Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

(2) The exercise of the authority granted herein shall be subject to there first being obtained from the appropriate foreign governments such operating rights as may be necessary. The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

(3) Charter services performed by the holder for the Department of Defense shall be furnished at the rates and compensation computed on a basis no lower than the basis of computation of compensation now or hereafter specified by the Board in applicable rules, regulations, or orders.

This certificate shall be effective on November 26, 1966: *Provided however*, That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of March 11, 1966 (Order E-24237), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

The authority to engage in supplemental air transportation as provided in paragraph 1 shall terminate five years after the effective date of this certificate.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 11th day of March, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate to the holder approved by the President of the United States on September 27, 1966 in Order E-24237.

Issued pursuant to
Order No. E-24237

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR SUPPLEMENTAL AIR TRANSPORTATION

WORLD AIRWAYS, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and property, as follows:

1. Between any point in any State of the United States or the District of Columbia, on the one hand, and

   (a) American Samoa, Guam, Johnston Island, the Marshall Islands, Okinawa, Wake Island, and point in Australasia, Indonesia, and Asia as far west as longitude 70 degrees east via a transpacific routing, on the other hand;

   (b) points in Jamaica, the Bahama Islands, Bermuda, Haiti, the Dominican Republic, Puerto Rico, the Virgin Islands, Trinidad, Aruba, the Leeward and Windward Islands, and any other place located in the Gulf of Mexico or the Caribbean Sea, on the other hand;

(c) points in British Honduras, the Canal Zone, Guatemala, Honduras, El Salvador, Nicaragua, Costa Rica, Panama, and in the countries on the continent of South America, on the other hand.

2. In overseas and foreign air transportation, and in air transportation between places in the same territory or possession of the United States pursuant to contracts with the Department of Defense.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regulations for supplemental air transportation and to the following additional terms, conditions, and limitations:

(1) Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

(2) The exercise of the authority granted herein shall be subject to there first being obtained from the appropriate foreign governments such operating rights as may be necessary. The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

(3) Charter services performed by the holder for the Department of Defense shall be furnished at the rates and compensation computed on a basis no lower than the basis of computation of compensation now or hereafter specified by the Board in applicable rules, regulations, or orders.

This certificate shall be effective on November 26, 1966: *Provided however*, That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of March 11, 1966 (Order E-24237), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

The authority to engage in supplemental air transportation as provided in paragraph 1 shall terminate five years after the effective date of this certificate.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 11th day of March, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate to the holder approved by the President of the United States on September 27, 1966 in Order E-24237.

Issued pursuant to
Order No. E-24237

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR SUPPLEMENTAL AIR TRANSPORTATION

ZANTOP AIR TRANSPORT, INC.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and property, as follows:

1. Between any point in any State of the United States or the District of Columbia, on the one hand, and points in Canada and Mexico, on the other hand.
2. In overseas and foreign air transportation, and in air transportation between places in the same territory or possession of the United States, pursuant to contracts with the Department of Defense.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regulations for supplemental air transportation and to the following additional terms, conditions, and limitations:

(1) Notwithstanding any other provisions of this certificate, the holder shall at all times con-

duct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

(2) The exercise of the authority granted herein shall be subject to there first being obtained from the appropriate foreign governments such operating rights as may be necessary. The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

(3) Charter services performed by the holder for the Department of Defense shall be furnished at the rates and compensation computed on a basis no lower than the basis of computation of compensation now or hereafter specified by the Board in applicable rules, regulations, or orders.

This certificate shall be effective on November 26, 1966: *Provided however*, That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of March 11, 1966 (Order E-24237), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

The authority to engage in supplemental air transportation as provided in paragraph 1 shall terminate five years after the effective date of this certificate.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 11th day of March, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate to the holder approved by the President of the United States on September 27, 1966 in Order E-24237.

Order No. E-24238

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 11th day of March, 1966

Docket 13795 *et al.*

SUPPLEMENTAL AIR SERVICE PROCEEDING

ORDER

A full public hearing having been held in the above-entitled proceeding and the Board, upon consideration of the record, having issued its opinion containing its findings, conclusions, and decision, which is attached hereto and made a part hereof;

IT IS ORDERED:

1. That there be and hereby are adopted and issued concurrently herewith amendments to Parts 208 and 378 of the Board's Regulations, which are attached hereto and made a part hereof.[1]

2. That said amendments shall be effective on November 26, 1966.

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

[1] For administrative convenience we have combined into a single amendment to Part 378 the revisions required by the decision in the instant proceeding as well as the decision in the *Reopened Transatlantic Charter Investigation* (All-Expense Tour Phase), Docket 11908 *et al.*

Regulation No. ER-474

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Economic Regulations Amendment No. 2 to Part 208
Effective: November 26, 1966
Adopted: March 11, 1966

PART 208—TERMS, CONDITIONS AND LIMITATIONS OF CERTIFICATES TO ENGAGE IN SUPPLEMENTAL AIR TRANSPORTATION

EXPANSION OF COVERAGE TO OVERSEAS AND FOREIGN CERTIFICATED SUPPLEMENTAL AIR TRANSPORTATION

Part 208 of the Board's Economic Regulations (14 CFR Part 208), which contains, *inter alia*, certain terms, conditions and limitations of interim certificates issued pursuant to section 7 of Public Law 87-528 and of certificates issued pursuant to section 401 (d) (3) of the Act, was revised and reissued [1] in conjunction with the Board's decision in the domestic phase of the *Supplemental Air Service Proceeding*, Docket 13795 *et al.*[2] In order to correspond with the scope of authority granted to supplemental air carriers in that decision, the regulation as then adopted pertains only to authorizations to perform interstate air transportation.[3]

[1] Regulation ER-454, adopted on March 11, 1966, and published in 31 F.R. 4771.

[2] Order E-23350.

[3] Between any point in any State of the United States or the District of Columbia, and any other point in any State of the United States or the District of Columbia.

To correspond with authorizations being awarded as a result of the Board's final decision in the foreign and overseas phase of the *Supplemental* case,[4] which is being issued concurrently herewith, we are amending Part 208 to expand its coverage to certificated supplemental overseas and foreign air transportation. In view of the fact that the regulatory problems with respect to such authority were dealt with by the Board in the above-mentioned proceeding, further notice and public procedure on the amendments involved herein are unnecessary and not in the public interest.

Accordingly, the Board hereby amends Part 208 of its Economic Regulations (14 CFR Part 208), effective November 26, 1966, as follows:

1. Amend the table of contents by adding § 208.32a and by revising § 208.33 to read as follows:

208.32a Flight delays and substitute air transportation (foreign).

208.33 Flight delays and substitute air transportation (interstate and overseas).

2. Amend § 208.3 by revising paragraphs (c) and (t) thereof to read as follows:

(c) "Supplemental air transportation" (other than operations subject to Part 295 of this subchapter) means charter flights in air transportation performed pursuant to (1) an interim certificate or authorization issued under section 7 of Public Law 87-528, or (2) a certificate of public convenience and necessity issued under section 401(d)(3) of the Act authorizing the holder to engage in supplemental air transportation of persons and property between any point

[4] Order E-24237.

in any State of the United States or the District of Columbia, and any other point in any State of the United States or the District of Columbia (exclusive of air transportation within the State of Alaska) or in foreign or overseas supplemental air transportation.

(t) "Substitute service" means the performance by an air carrier of foreign or overseas air transportation, or air transportation between the 48 contiguous states, on the one hand, and the state of Alaska or Hawaii, on the other hand, in planeload lots pursuant to an agreement with another air carrier to fulfill such other air carrier's contractual obligation to perform such air transportation for the Department of Defense and when the performance of such air transportation is not to take place during a period longer than three weeks.

3. Amend § 208.32(d) to read as follows:

§ 208.32 *Tariffs and terms of service.*

* * * *

(d) Each and every contract for a charter to be operated hereunder shall incorporate the provisions of §§ 208.10 through 208.15, inclusive, and 208.32a, 208.33 and 208.33a where applicable, concerning insurance and substitute transportation.

4. Add a new § 208.32a entitled "Flight delays and substitute air transportation (foreign)" to read as follows:

§ 208.32a *Flight delays and substitute air transportation (foreign).*

Supplemental air carriers shall assume, and publish as part of the rules and regulations of their tariffs applicable to passenger service in foreign air trans-

portation, the following obligations without prejudice, and in addition, to any other rights or remedies of passengers under applicable law:

(a) *Substitute air transportation.*

(1) On all charter flights, unless the air carrier causes an aircraft to finally enplane each passenger and commence the takeoff procedures at the airport of departure before the forty-eighth hour following the time scheduled for the departure of such flight, it shall provide substitute transportation in accordance with the provisions of this paragraph.

(2) As soon as the air carrier discovers, or should have discovered by the exercise of reasonable prudence and forethought, that the departure of any such charter flight will be delayed more than forty-eight hours, such air carrier shall arrange for and pay the costs of substitute air transportation for the charter group on another charter flight, operated by any other carrier or foreign air carrier.

(3) When neither the charter transportation contracted for nor substitute transportation has been performed before the expiration of forty-eight hours following the scheduled departure time of any such charter flight, the charterer, or his duly authorized agent, may arrange for substitute air transportation of the members of the charter group, at economy or tourist class fares, on individually ticketed flights and the chartered air carrier shall pay the costs of such air transportation to the substitute air carrier or foreign air carrier.

(4) In determining the period of time during which the departure of a charter flight has been delayed within the purview of this paragraph, periods of delay caused by the prohibition of flights from the airport of departure because of weather or other opera-

tional conditions shall be excluded if, and while, the air carrier had an airworthy aircraft which is capable of transporting the charter group in a condition of operational readiness posted at such airport.

(b) *Incidental expenses.*[5]

(1) On all charter flights bound from a point outside the continent where the charter originated to the point where it terminates, unless the air carrier causes an aircraft to finally enplane each passenger and commence the takeoff procedures at the airport of departure before the sixth hour following the time scheduled for the departure of such flight, it shall pay incidental expenses in accordance with the provisions of this paragraph. Such payments shall be made at the airport of departure as soon as they become due to the charterer, or its duly authorized agent, for the account of each passenger, including infants and children traveling at reduced fares.

(2) Such payments shall be made at the rate of $16.00 for each full twenty-four hour period of delay following the scheduled departure time. However, the sum of $8.00 shall be paid for each passenger delayed six hours following the scheduled departure time. Thereafter, during the succeeding 18 hours of delay, an additional sum of $8.00 shall be paid for each passenger delayed in installments of $4.00 for the first and second succeeding six-hour period of delay, or any fractional part thereof. If the delay continues beyond

[5] Although the requirements with respect to providing incidental expenses are made expressly applicable only to the return leg of a charter flight, the air carriers are expected, in the case of delay in departure of the originating leg of a flight, to furnish such incidental expenses to charter passengers whose homes are not located within a reasonable distance from the point of origination of the charter.

Regulation No. SPR-16

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Special Regulations Amendment No. 2 to Part 378
Effective: November 26, 1966
Adopted: March 11, 1966

PART 378—INCLUSIVE TOURS BY SUPPLEMENTAL AIR CARRIERS AND TOUR OPERATORS

EXPANSION OF COVERAGE TO OVERSEAS AND FOREIGN AIR TRANSPORTATION

Part 378 of the Board's Special Regulations (14 CFR Part 378), which contains the regulatory provisions governing the operation of inclusive tour charters, was originally issued [1] in conjunction with the Board's decision in the domestic phase of the *Supplemental Air Service Proceeding*, Docket 13795, *et al.*[2] In order to correspond with the scope of authority granted to supplemental air carriers in that decision, the regulation as then adopted pertains only to inclusive tours in interstate air transportation.

To correspond with authorizations being awarded as a result of the Board's final decisions in the foreign and overseas phase of the *Supplemental* case [3] and in the *Reopened Transatlantic Charter Investigation (All-expense Tour Phase)*, Docket 11908, *et*

[1] Regulation No. SPR-14, adopted March 11, 1966, and published in 31 F.R. 4779.

[2] Order E-23350.

[3] Order E-24237.

al.,[4] which are being issued concurrently herewith, we are amending Part 378 to expand its coverage to inclusive tours in overseas and foreign air transportation. In view of the fact that the regulatory problems with respect to such authority were dealt with by the Board in the above-mentioned proceedings, and because parties to the rule making were heretofore given the opportunity to comment on this matter[5], further notice and public procedure on the amendments involved herein are unnecessary and not in the public interest.

Accordingly, the Board hereby amends Part 378 of its Special Regulations effective November 26, 1966, as follows:

1. By revising § 378.1 to read as follows:

§ 378.1 *Applicability.*

This part establishes the terms and conditions governing the furnishing of inclusive tours in interstate, overseas and foreign air transportation by supplemental air carriers and tour operators. This part also relieves tour operators from various provisions of the Act and the Board's regulations for the purpose of enabling them to provide inclusive tours to members of the general public utilizing aircraft chartered from supplemental air carriers. The provisions

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[4] Order E-24240.

[5] Part 378 as originally proposed pertained to interstate and *overseas* air transportation (Notice of Proposed Rule Making SPDR-6, January 5, 1965, 30 F.R. 281). Moreover, the proposed regulation was amended to cover foreign air transportation (Supplemental Notice of Proposed Rule Making, SPDR-6B, October 11, 1965, 30 F.R. 13077). Comments concerning both of these Notices were received, as set forth in SPR-14, *supra*, and have been considered by the Board.

of this regulation shall not be construed as limiting any other authority to engage in air transportation issued by the Board. Nothing contained in this part shall be construed as repealing or amending any provision of any of the Board's regulations, unless the context so requires.

2. By revising § 378.2(a) to read as follows:

§ 378.2 *Definitions.*

As used in this part, unless the context otherwise requires—

(a) "Inclusive tour charter" means the charter of an entire aircraft by a tour operator for the carriage by a supplemental air carrier of persons traveling in air transportation on inclusive tours.

(Sections 101(3), 204(a), 401, 409 and 414 of the Federal Aviation Act of 1958, as amended, (72 Stat. 737; 49 U.S.C. 1301; 72 Stat. 743; 49 U.S.C. 1324; 72 Stat. 754 as amended by 76 Stat. 143; 49 U.S.C. 1371; 72 Stat. 768; 49 U.S.C. 1379; 72 Stat. 770; 49 U.S.C. 1384) and section 7 of Public Law 87-528 (76 Stat. 146; 49 U.S.C. 1371).)

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

Note: This is Amendment No. 2 to Part 378 effective May 13, 1966.

Order No. E-24239

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 11th day of March, 1966

Docket 13795 *et al.*

SUPPLEMENTAL AIR SERVICE PROCEEDING

ORDER

A full public hearing having been held in the above-entitled proceeding and the Board, upon consideration of the record and on the basis of the findings and conclusions set forth in the Board's decision of March 11, 1966, Order E-23350, having issued its opinion containing its findings, conclusions, and decision which is attached hereto and made a part hereof;

IT IS ORDERED:

1. That the interim certificates and interim authority for supplemental air service, to the extent not previously ordered terminated by Order E-23350, March 11, 1966, shall terminate with respect to each of the carriers whose names are set forth in paragraph 1 of Order E-24237, issued contemporaneously herewith, upon the effectiveness of the certificates respectively issued thereunder.

2. That this order shall be effective upon the date of the approval by the President of the United States of Order E-24237, issued contemporaneously herewith.

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

Order No. E-24242

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Adopted by the Civil Aeronautics Board
at its office in Washington, D. C.
on the 5th day of April, 1966

Docket 11908 *et al.*

REOPENED TRANSATLANTIC CHARTER INVESTIGATION

ORDER

A full public hearing having been held in the above-entitled proceeding and the Board, upon consideration of the record, having issued its opinion containing its findings, conclusions, and decision;

IT IS ORDERED:

1. That certificates of public convenience and necessity for supplemental air transportation in the forms attached hereto be issued to American Flyers Airline Corp., Overseas National Airways, Inc., Trans International Airlines, Inc., and World Airways, Inc.

2. That said certificates shall be signed on behalf of the Board by its Secretary, shall have affixed thereto the seal of the Board, and, subject to extension of their effective dates in accordance with the provisions of said certificates, shall be effective on November 26, 1966.

3. That the joint motion of Trans International Airlines and World Airways filed herein on February 1, 1966, be and it hereby is denied.

4. That, except to the extent otherwise indicated, all applications, motions, and requests involved herein be and they hereby are denied.

5. That this order shall become effective upon the date of its approval by the President of the United States.

By the Civil Aeronautics Board:

HAROLD R. SANDERSON
Secretary

(SEAL)

THE WHITE HOUSE
APPROVED:

LYNDON B. JOHNSON
September 27, 1966

Issued pursuant to
Order No. E-24242

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR SUPPLEMENTAL AIR TRANSPORTATION

AMERICAN FLYERS AIRLINE CORP.

is hereby authorized, subject to the provisions hereinafter set forth, the provisions of Title IV of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued thereunder, to engage in supplemental air transportation (including inclusive tour charter authority) with respect to persons and their personal baggage, as follows:

> Between points in the 48 contiguous States of the United States of America, on the one hand, and points in Greenland, Iceland, the Azores, Europe, Africa, and Asia, as far east as (and including) India, on the other hand.

The service herein authorized is subject to the terms, conditions, and limitations prescribed by the Board's Regulations for transatlantic supplemental air transportation.

The holder shall not (a) advertise its services or hold itself out to the public as an air carrier authorized to engage in air transportation unless it includes the words "supplemental air carrier" in such advertising; or (b) conduct business in any name other than that set forth in this certificate, except as expressly authorized by the Board.

Control of the holder shall not, without prior application to and approval by the Board, be transferred, directly or indirectly, by assignment, transfer of voting stock, or otherwise, to any person who controlled, or participated in control of, as a partner, officer, or director, any air carrier theretofore found by the Board to have committed knowing and willful violations of the Civil Aeronautics Act of 1938, as amended, the Federal Aviation Act of 1958, or any order, rule, or regulation issued pursuant to said Acts during the period such person controlled or participated in the control of said air carrier. Any such application may be approved by the Board with or without hearing. No such application shall be denied unless the Board finds, after notice to the holder and the parties to the proposed transfer, and after opportunity for hearing, that, in the event the proposed transfer is consummated, the holder will thereby be rendered unfit, unwilling, or unable to conform to the provisions of the Federal Aviation Act of 1958, and the rules, regulations, and requirements of the Board thereunder. For the purposes of this paragraph, a transfer of 20 percent or more of the voting stock of the holder shall be deemed to constitute *prima facie* evidence of a transfer of control so as to require the filing of an appropriate application with the Board.

Notwithstanding any other provisions of this certificate, the holder shall at all times conduct its operations in accordance with all treaties and agreements between the United States and other countries, and the exercise of the privileges granted by this certificate shall be subject to compliance with such treaties and agreements and to any orders of the Board issued pursuant to, or for the purpose of requiring compliance with, such treaties and agreements.

The exercise of the privileges granted by this certificate shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board.

This certificate shall be effective on November 26, 1966, and shall terminate on April 18, 1969: *Provided, however*, That prior to the date on which this certificate would otherwise become effective the Board, either on its own initiative or upon the timely filing of a petition or petitions seeking reconsideration of the Board's order of April 5, 1966 (Order E-24242), insofar as such order authorizes the issuance of this certificate, may by order or orders extend such effective date from time to time.

IN WITNESS WHEREOF, the Civil Aeronautics Board has caused this certificate to be executed by the Secretary of the Board, and the seal of the Board to be affixed hereto, on the 5th day of April, 1966.

HAROLD R. SANDERSON
Secretary

(SEAL)

Issuance of this certificate to the holder approved by the President of the United States on September 27, 1966 in Order E-24242.

[The certificates issued to Overseas National Airways, Inc., Trans International Airlines, Inc., and World Airways, Inc., which are identical to the above certificate have been omitted.]

APPENDIX C

E-23350

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Docket 13795 *et al.*

SUPPLEMENTAL AIR SERVICE PROCEEDING

Decided: March 11, 1966

Certificates issued to American Flyers Airline Corp., Capitol Airways, Johnson Flying Service, Modern Air Transport, Purdue Aeronautics Corp., Saturn Airways, Southern Air Transport, Trans International Airlines, World Airways, and Zantop Air Transport authorizing civil and military charters of persons and property between the 50 States of the United States and the District of Columbia, subject to certain conditions.

Decision deferred as to applications of Overseas National Airlines, Standard Airways, and Vance International Airways for further hearing on qualifications.

New Part 378 of the Special Regulations, which grants indirect air carrier authority to tour operators and sets forth the provisions governing the conduct of inclusive tour charters by the tour operators and the supplemental air carriers, being concurrently adopted and issued by the Board.

Part 208 of the Economic Regulations revised and reissued so as to incorporate therein new definition of charter flight to allow the engagement by the char-

tering organization of one-third capacity of an aircraft for the movement of passengers on a time, mileage, or trip basis and to set forth therein terms, conditions, and limitations governing the operations of the supplemental air carriers being issued certificates under section 401(d)(3) of the Act.

Except for inclusive tour charters, which are authorized for a five-year period, certificates are being issued for an indefinite period.

Decision as to all applicants with respect to overseas and foreign aspects of supplemental air transportation withheld until action under section 801 of the Act.

APPEARANCES:

Same as in examiner's decision and, in addition, the following:

Berl I. Bernhard for Allegheny Airlines, Bonanza Air Lines, Hawaiian Air Lines, Lake Central Airlines, Ozark Air Lines, Pacific Airlines, Piedmont Aviation, Southern Airways, and Trans-Texas Airways.

Richard D. Neumann for Holiday Airways.
Howard Boros for Overseas National Airways.
R. P. Smith for Purdue Aeronautics Corporation.
Judah Best and *Martin L. Friedman* for United States Overseas Airlines.

OPINION

BY THE BOARD:

This is a consolidated proceeding on the applications of seventeen applicants seeking certificates of public convenience and necessity under section 401(d)

and six are not fit, willing, and able;[4] (5) appropriate regulations should be adopted to implement the authority being granted and prescribe the limitations thereon.

Exceptions and briefs to the Board have been filed,[5] and the Board has heard oral argument.

Upon consideration of the entire record, we find that we are in agreement with the examiner's disposition of the domestic issues with but one significant exception. We have decided that rather than finally dispose of the applications of ONA, Standard, and Vance, we should reopen the record for further hearings before the examiner on the current qualifications of the three applicants. Accordingly, except as modified herein, we adopt as our own the findings, conclusions, and recommendations of the examiner on the domestic issues contained in his decision which is attached hereto as an appendix.[6]

Since the examiner in his thorough and carefully considered recommended decision dealt fully with the issues in the case, we will limit our opinion to certain

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[4] Conner, Holiday, ONA, Standard, Stewart, and USOA.

[5] Exceptions and briefs were filed by American Flyers, Capitol, Conner, Holiday, Johnson, Modern, ONA, Purdue, Saturn, Southern, Standard, Stewart, TIA, Vance, World, Zantop, The Flying Tiger Line, Lake Central Airlines, Local and Short-haul Carriers, Mackey Airlines, Pan American-Grace Airways (Panagra), Trans Caribbean Airways, and the Trunkline intervenors.

[6] The examiner issued a single decision covering both the domestic issues and the overseas and foreign issues. For convenience, we are attaching the examiner's decision in its entirety. We obviously do not here adopt the portions of the decision directed to matters that are subject to the approval of the President.

matters raised on exceptions and our reasons for the limited reopening.

Inclusive Tour Charters

A major issue in the proceeding involves the question of inclusive tour charters. These are charters to tour operators selling packaged tours to individual members of the public. As already indicated, the examiner found that such tour charters could be lawfully authorized by the Board and would meet a substantial public need for low-cost pleasure air travel. He further found that the tour authorization would economically strengthen the supplemental carriers without having a materially adverse effect on the certificated route carriers. Accordingly, he recommended the grant of such authority for a five-year period, subject, however, to a set of comprehensive regulatory provisions designed to assure that the tours would be limited to group travel, rather than individually ticketed point-to-point transportation.

We are in full agreement with these findings and conclusions and find, in the main, there is no necessity to explore them further. However, several exceptions warrant comment.

Legal Issues. Under the definition of supplemental air transportation in section 101(33) of the Act, we may authorize supplemental air carriers to engage solely in "charter trips." The argument is made that the term "charter trip" does not include charters to tour operators acting as indirect air carriers for the purpose of transporting inclusive tour groups whose members are gathered from the general public, and that charters would be mere subterfuges for individually ticketed transportation. The argument is based primarily on the claim that, while the statute does not spell out a prohibition against inclusive tour charters,

its legislative history expresses such an intention. The examiner correctly rejected this argument.

In our view, the statute on its face clearly leaves to the Board's exercise of its sound discretion the power to define the term "charter" so long as we preserve the basic distinction between group travel and individually ticketed travel. This principle was established in the *Transatlantic Charter Investigation*, Docket 11908, and we are persuaded that it governs this case as well.

In the *Transatlantic* case the Board, for the first time, authorized supplemental carriers to charter space to two groups on one aircraft.[7] This split-chartering was attacked by the certificated route carriers on the ground that the legislative history of P.L. 87-528, the Supplemental Air Carrier Act, demonstrated that Congress intended that the word "charter," as used therein, should not be expanded beyond its traditional scope. The court decisively rejected this argument, stating:

> "We are unable to conclude that the term 'charter trips' has a fixed meaning . . . . We conclude Congress intended, although not without limits, that the Board should be free to evolve a definition in relation to such variable factors as changing needs . . . . . We agree with the Board that the legislative history reveals that a prime concern of Congress was to maintain the integrity of the charter concept—to preserve the distinction between group and individually ticketed travel; within these limits it is for the Board to evolve reasonable definitions." [8]

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[7] Orders E-20530, 20531, issued March 3, 1964.

[8] *American Airlines, Inc., et al.* v. *C.A.B.* 348 F. 2nd 349, 354 (C.A.D.C., 1965).

Moreover, the element of novelty, which was present in split charters, is absent here. Inclusive tour charters are well established in surface transportation, and their legality has long since been settled, as against contentions that they are mere subterfuges for individually ticketed transportation. The question arose in the leading case of *Tauck Tours*, and involved the issue of whether the Interstate Commerce Commission had the power to issue a broker's license to a travel agency authorizing the travel agent to charter buses from motor carriers licensed to engage only in charter services. In its first report of the case, Division 5 of the Commission limited the broker's authority to sell individual all-expense tours to the use of motor carriers authorized to perform services on an individual-ticket basis and at individual-ticket rates, on the ground that the proposed services were not bona fide charters.[9] On reconsideration, however, Division 5 concluded that the charters were lawful. It recognized that a motor carrier whose authority was limited to charter services could not perform individually ticketed services "through the subterfuge of a broker selling tickets to a number of persons who purchase individual transportation between two points." [10] Such a group would not constitute a bona fide charter party since "there does not exist any community of interest among these persons other than a desire for transportation between identical points." [11] However, a group of individuals participating in an all-expense tour venture

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[9] *Tauck Tours, Inc., Extension—New York, N. Y.*, 49 M.C.C. 491 (1949).

[10] 52 M.C.C. 373, 376 (1951).

[11] *Ibid.*

"have more than just a mere desire to travel between the same points. They are participants in a group which will maintain its identity for some predetermined period of time, be under the direction of a guide, and enjoy substantially identical accommodations and experiences. Upon further consideration we are convinced that individuals by agreeing to become group members for the sake of group advantages, achieve a degree of cohesiveness such that, even though the group was organized by applicant, it is entitled through applicant as its agent to deal with the carriers as a group and to buy charter service for the group from the carriers . . . ." [12]

Division 5's report was affirmed by the full Commission applying substantially the same reasoning.

A three-judge Federal District Court affirmed the Commission's conclusion. In the court's view "a good deal more than bare individual transportation is involved. The tour is attractive because it is a group adventure . . . . The important thing is that the Tauck group is a cohesive whole interested in a tour for pleasure, and not in mere transportation." [13] This conclusion was affirmed by the U. S. Supreme Court.[14]

Thus, inclusive tour charters are supported by precedent and practice in the field of surface trans-

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[12] *Ibid.*

[13] *National Bus Traffic Assn.* v. *United States*, 143 F. Supp. 689, 696-7 (D.C. N.J., 1956). It is true that the court relied in part on the fact that all-expense tour charters were long established in the motor carrier field and upon the absence of any legislative history evidencing an intention to prohibit them. However, we agree with the examiner's reading of the decision that these factors were not decisive considerations.

[14] 352 U.S. 1020 (1957).

portation. It is true that the Board has not hitherto authorized inclusive tour charters in air transportation, but our determinations not to do so have been clearly based on policy rather than legal grounds. On the other hand, the Board has not required "affinity" of a group before it may itself apply for charter transportation.[15] And, in the cargo field, it has allowed freight forwarders to charter aircraft for transportation of consolidated cargo, against the claim of some parties that this policy was inconsistent with the Board's policy of prohibiting agent-assembled passenger charters.[16]

But it is argued that all of the foregoing is overridden by legislative history. It is suggested that because the Senate bill specifically authorized inclusive tours, whereas the version ultimately enacted was silent on the matter, Congress intended to prohibit such tours. On the contrary, this sequence of events simply demonstrates that Congress intended not to freeze the definition, but to leave the question open for the Board to determine as a regulatory matter. This conclusion is reinforced by a closer analysis of the legislative history.

During the hearings on the bills, there was a great deal of testimony relating to the Board's regulations defining charters as restricted to "homogeneous" groups.[17] The supplementals felt that the term "char-

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[15] See, for example, *Pan Am. World Airways, et al., IATA Agreements*, 23 C.A.B. 275, 280-281 (1956); *IATA Agreements, Group Excursion Fares*, 26 C.A.B. 755, 756 (1958).

[16] *International Airfreight Forwarder Investigation*, 27 C.A.B. 658, 668-669 (1958).

[17] Hearings before Subcommittee of Commerce Committee on H.R. 7318, H.R. 7512, and H.R. 7679, 87th Cong., 1st Sess. 80, 189, 231 (June 20, 21, and 23, 1961). Hearings before

ter" should be defined so as to compel the Board to liberalize its regulations and allow them to carry inclusive tours as charters. S. 1969, as reported to the Senate on August 8, 1961, defined charters so as to include specifically a charter to a person who offers all-expense tours to the public.[18] The Senate Commerce Committee Report supporting this definition explained that "because the development of the charter market has been inhibited by artificial restrictions which have been imposed by Board regulations on a legal charter," the term should be defined in the statute.[19]

Unlike the Senate bill, the bill passed by the House limited supplementals' certificates to "charter trips" and did not define the term (H.R. 7318, as amended, September 13, 1961). The House Committee preferred to leave the definition of charter to the Board. Its report stated:

> "The supplementals recommended that a definition of charter be written into the bill and this

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Aviation Subcommittee of Commerce Committee on S. 1969, 87th Cong., 1st Sess. 54, 61, 98-99, 110-111, 132, 136, 143, 151, 156, 179, 186, 267 (June 26, 29, and 30, 1961).

[18] The bill contained the following definition: " 'Charter service' means air transportation performed by an air carrier holding a certificate of public convenience and necessity where the entire capacity of one or more aircraft has been engaged for the movement of persons and their baggage or for the movement of property on a time, mileage, or trip basis, but shall not include transportation services offered by an air carrier to individual members of the general public or performed by an air carrier under an arrangement with any person who provides or offers to provide transportation services to individual members of the general public, other than as a member of a group on an all-expense paid tour."

[19] S. Rep. No. 688 (Calendar No. 664), 87th Cong., 1st Sess. 13 (Aug. 8, 1961).

was given consideration by your committee. The bill passed by the Senate has such a definition.

"Your committee, however, after considering the problem, came to the conclusion that under the circumstances, authority to define charter services should be left, as at present, with the Board, subject to the limitations contained in the reported bill. This is a very difficult subject and any effort to freeze a definition of charter service into law could well lead to complications." [20]

The bill as reported by the Conference Committee and as enacted followed the House version and eliminated the definition of "charter service."

In short, the Senate version of the bill as well as the Senate Committee Report make clear that the Senate was dissatisfied with the Board's historic refusal to authorize inclusive tour charters. On the other hand, the House bill contained no reference one way or the other to all-expense tours, and the House Committee Report clearly indicates that this matter was to be left to the Board to determine. The ultimate adoption of the House version strongly supports a construction of the statute in line with the House Committee Report.

Thus, the clear meaning of the statute is reinforced by the sequence of events in the Senate and the House and the authoritative Committee Reports explaining those events. Under these circumstances, there is no sound reason for attempting to analyze the statements made at the time of the passage of the bill by certain of its floor managers. This is not a situation where resort to floor debate is required to explain ambigui-

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[20] H. Rep. No. 1177, 87th Cong., 1st Sess. 11 (Sept. 13, 1961).

ties in the action taken by Congress. In any event, the remarks made on the floor fall far short of a clear consensus.[21]

Considering all of the foregoing, we are persuaded that we have the power to authorize inclusive tour charters as "charter trips" under section 101(33) provided that we preserve the basic distinction between group and individual travel.

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[21] Only two members of Congress, both Senators, expressed anything approaching an unequivocal statement that the Board would lack legal power to authorize inclusive tour charters (Senator Scott, 108 Cong. Rec. 12284-5; and Senator Cotton, 108 Cong. Rec. 12284). Three other members of Congress, including the Chairmen of the relevant House Committee and Subcommittee, while stating opposition to the grant of inclusive tour authority by the Board, expressed no opinion as to the Board's legal authority under the bill to do so (Senator Thurmond, 108 Cong. Rec. 12285; Representative Harris, 108 Cong. Rec. 12322; and Representative Williams, 108 Cong. Rec. 12322). Finally, Senator Monroney, the Chairman of the Aviation Subcommittee of the Senate Interstate and Foreign Commerce Committee, while not specifically addressing himself to inclusive tours, flatly stated that the matter of the definition of charter was to be left to the Board's discretion (108 Cong. Rec. 12283).

APPENDIX D

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the twentieth day of July, one thousand nine hundred and sixty-seven.

Present:

HON. PAUL R. HAYS,
HON. WILFRED FEINBERG, Circuit Judge,
HON. EDWARD C. MCLEAN, District Judge.

PAN AMERICAN WORLD AIRWAYS, INC., TRANS WORLD AIRLINES, INC., AMERICAN AIRLINES, INC., PETITIONERS

v.

CIVIL AERONAUTICS BOARD, RESPONDENT

AMERICAN SOCIETY OF TRAVEL AGENTS, INC., WORLD AIRWAYS, INC., SATURN AIRWAYS, INC., TRANS INTERNATIONAL AIRLINES, INC., PURDUE AERONAUTICS CORP. (PURDUE), AMERICAN FLYERS AIRLINE CORP., INTERVENORS

A petition for review of orders of the Civil Aeronautics Board together with a motion by the respondent to dismiss the petition for lack of jurisdiction or in the alternative to transfer the action to the United States Court of Appeals for the District of Columbia.

This cause came on to be heard on a transcript of record certified by the Civil Aeronautics Board and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged and decreed that said orders be and they hereby are set aside and that the action be and it hereby is remanded for further proceedings not inconsistent with the opinion of this court, with costs to the petitioners.

Further ordered, adjudged and decreed that said motion be and it hereby is denied.

A. DANIEL FUSARO
Clerk

A true Copy

/s/ A. Daniel Fusaro
Clerk

[SEAL]

United States Court of Appeals
Second Circuit
Filed July 20, 1967
A. Daniel Fusaro, Clerk

any air transportation unless there is in force a certificate issued by the Board authorizing such air carrier to engage in such transportation.

* * * *

Issuance of Certificate

(d) (1) The Board shall issue a certificate authorizing the whole or any part of the transportation covered by the application, if it finds that the applicant is fit, willing, and able to perform such transportation properly, and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board hereunder, and that such transportation is required by the public convenience and necessity; otherwise such application shall be denied.

(2) In the case of an application for a certificate to engage in temporary air transportation, the Board may issue a certificate authorizing the whole or any part thereof for such limited periods as may be required by the public convenience and necessity, if it finds that the applicant is fit, willing, and able properly to perform such transportation and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board hereunder.

(3) In the case of an application for a certificate to engage in supplemental air transportation, the Board may issue a certificate, to any applicant not holding a certificate under paragraph (1) or (2) of this subsection, authorizing the whole or any part thereof, and for such periods, as may be required by the public convenience and necessity, if it finds that the applicant is fit, willing, and able properly to perform the transportation covered by the application and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board hereunder. Any certificate issued pursuant to this paragraph shall contain such limitations as the Board

shall find necessary to assure that the service rendered pursuant thereto will be limited to supplemental air transportation as defined in this Act.

* * * *

TITLE VIII—OTHER ADMINISTRATIVE AGENCIES

THE PRESIDENT OF THE UNITED STATES

Sec. 801. [72 Stat. 782, 49 U.S.C. 1461] The issuance, denial, transfer, amendment, cancellation, suspension, or revocation of, and the terms, conditions, and limitations contained in, any certificate authorizing an air carrier to engage in overseas or foreign air transportation, or air transportation between places in the same Territory or possession, or any permit issuable to any foreign air carrier under section 402, shall be subject to the approval of the President. Copies of all applications in respect of such certificates and permits shall be transmitted to the President by the Board before hearing thereon, and all decisions thereon by the Board shall be submitted to the President before publication thereof.

* * * *

TITLE X—PROCEDURE

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JUDICIAL REVIEW OF ORDERS

Orders of Board and Administrator Subject to Review

Sec. 1006. [72 Stat. 795, as amended by 74 Stat. 255, 75 Stat. 497, 49 U.S.C. 1486] (a) Any order, affirmative or negative, issued by the Board or Administrator under this Act, except any order in respect of any foreign air carrier subject to the approval of the President as provided in section 801 of this Act, shall be subject to review by the courts of appeals of

the United States or the United States Court of Appeals for the District of Columbia upon petition, filed within sixty days after the entry of such order, by any person disclosing a substantial interest in such order. After the expiration of said sixty days a petition may be filed only by leave of court upon a showing of reasonable grounds for failure to file the petition theretofore.

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